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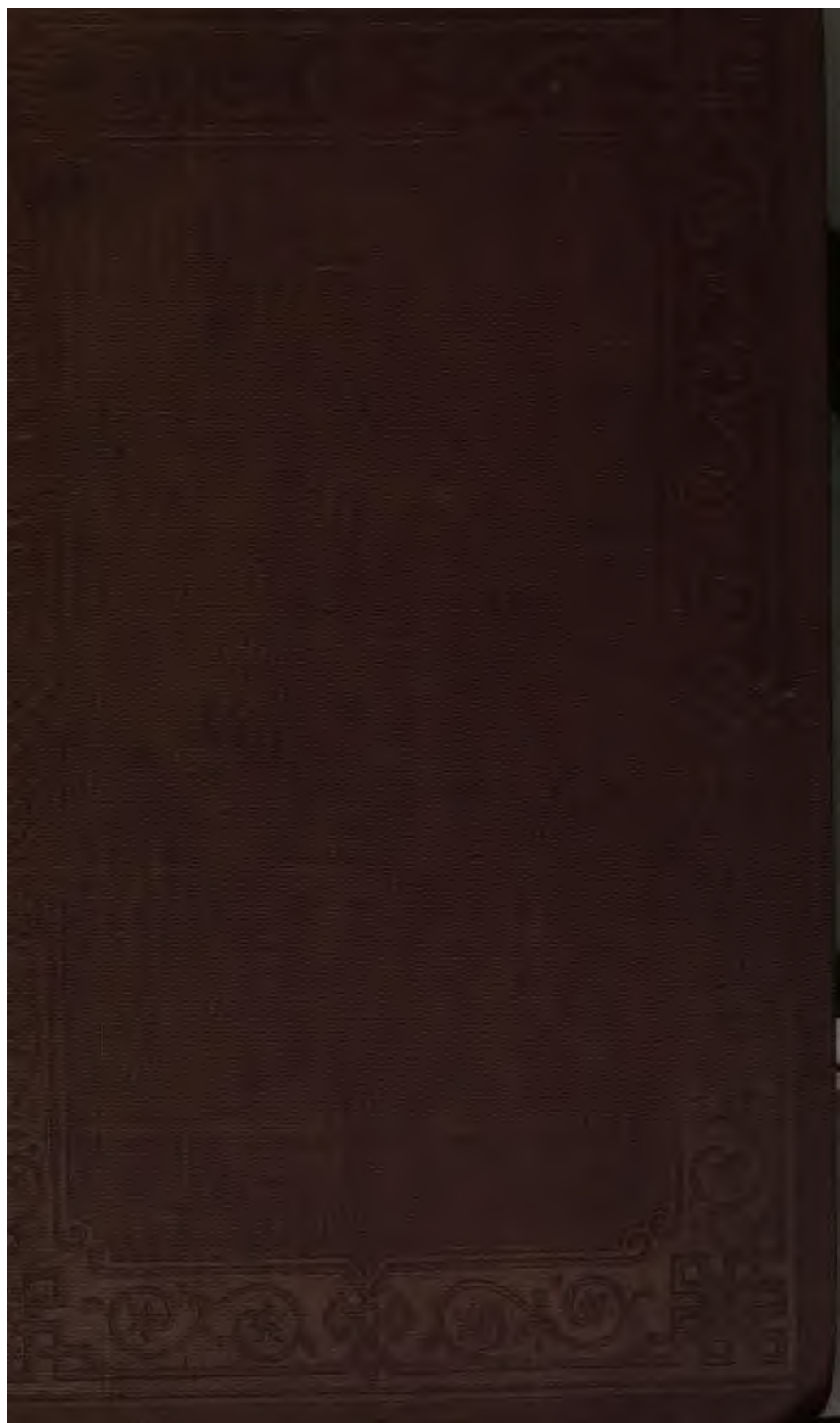
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THE PRACTICE
BEFORE
THE RAILWAY COMMISSIONERS
UNDER
"THE REGULATION OF RAILWAYS ACT, 1873."

WITH THE LAW APPLICABLE THERETO, AND THE
GENERAL ORDERS, FORMS, TABLE
OF FEES, STATUTES, &c.

BY R. GORDON JUNNER, ESQ.,

OF THE MIDDLE TEMPLE, BARRISTER-AT-LAW.



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P R E F A C E.

THE Act passed in last Session of Parliament known as "The Regulation of Railways Act, 1873," has created a new tribunal, to which in certain matters relating to railway and canal companies, the jurisdiction of the Court of Common Pleas and the Board of Trade has been transferred, and on which additional powers, particularly with respect to adjusting through rates, and settling by arbitration disputes between companies, have been conferred. This tribunal at present consists of three members, who are styled "The Railway Commissioners."

Viewing the importance of their jurisdiction, the author has considered that a work on the practice of their Courts would be acceptable to the legal profession and the public.

In the First Part will be found the Act with notes thereon, and the practice of the Commissioners' Courts. The Second Part treats of the law with respect to undue preference, and the other subjects dealt with under "The Railway and Canal Traffic Act, 1854." The Appendix (Part 3) contains the general orders, forms, table of fees, statutes, &c., necessary for the information of the practitioner.

When the main portion of the work was written, no

cases had been decided by the Commissioners. Those that have been decided it has consequently been necessary to insert at the end of the Introduction.

Much information for the Introduction has been obtained from the Report of the Joint Select Committee of both Houses laid before Parliament last Session.

The author has to express his thanks to his friend Mr. William Rutherford, of the Middle Temple, for assistance afforded in the preparation of the work.

R. G. J.

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April, 1874.

ADDENDUM.¹

After S. 16, on the 12th line of page 32, add "31 and 32 Vict. c. 119, ss. 36 and 37."

CORRIGENDA.

On the last line of page 28, for "8 Vict. c. 16" read "8 Vict. c. 20." On the third line of page 29, for "8 Vict. c. 17" read "8 and 9 Vict. c. 33."

¹ For the Cases decided by the Commissioners, see Introduction, p. xxvii.



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INTRODUCTION.

THE subject of railway legislation is one that has from time to time been investigated by Select Committees of both Houses of Parliament, as well as by Royal Commissions.

At first it was uncertain whether railways would supersede roads; and long after it had become obvious that road competition was impracticable, canals were thought likely to compete effectively for the heavier traffic. It was also supposed that railway, like canal companies, would be merely the owners of the way, receiving tolls for the use of it, and that amongst the carriers and owners of locomotive power using their own engines and carriages upon the line, there would be ample room for competition. The companies were consequently bound by their Acts to admit the carriages and engines of other persons on their lines at a certain rate of toll, whilst in many cases they were also bound, if acting as carriers themselves, to certain maximum rates specified in their several Acts. But as the railway companies were not bound to furnish any accommodation except the use of the way, and as single management was necessary, the competition between different carriers on the same line never took effect; and in 1839-1840 a Committee reported in the strongest terms that this form of competition was both impracticable and undesirable, and that monopoly upon the same line, at all events with regard to passengers, was inevitable. This Committee made three reports, and the result of these was the passing of 3 & 4 Vict. c. 97, and 5 & 6 Vict. c. 55, which contained nothing effectively checking or regulating monopoly.

The question of competition between various railway

Contents



companies has greatly occupied the attention of Committees and Commissions.

This competition and the development of railway speculation again led in 1844 to the appointment of a Committee. They issued five Reports. The second of these contained recommendations as to the appointment of Private Bill Committees to consider competing schemes. The third had reference to fares and rates which the Committee considered too high, to competition which would do more injury to the companies than good to the public, to monopoly which was to be guarded against, and to new lines with regard to which the Government and Parliament ought to reserve certain powers, to be exercised after a given time. The Committee also recommended that there should be one cheap train every day, carrying third class passengers at *1d.* a mile, and that the passenger tax on such passengers should be reduced by one half.

In the Fifth Report, the Committee, with reference to the carrying question, stated :—

“The Committee have taken evidence to some extent on the subject of the difficulties which have arisen between the railway companies and the carriers who transmit goods over their line in the conduct of their reciprocal relations.

“They have before them certain clauses in relation to this branch of this subject, which, as they believe, convey a view of the arrangements which the carriers desire, but which they also apprehend would be most unpalatable to the railway companies. The leading object of these clauses appears to be to define, in conformity with the views of the carrying interest, the particulars of what constitutes the portion of the complete charge of carriage of goods by railway, which is not essentially railway charge, and for which it is admitted to be desirable to secure free competition between the railway companies acting as carriers and other private carriers using their line; and also to guard against attempts at evasion or inequality of charge on the part of railway companies, by investing the Board of Trade with a stringent and summary power of hearing and deciding complaints, and of making, from time to time, such orders as may appear necessary in order to enforce a substantial compliance with the provisions of the proposed clauses.

“Without entering minutely into a discussion of these clauses, it

appears sufficient to the committee to observe that an interference of such an extensive and unusual nature with the legal rights and liabilities under which railway companies and those who have relations with them, in regard to the carriage of goods, have hitherto conducted their business, ought not, in their opinion, to be attempted, unless after mature deliberation upon a very strong case of necessity established for the adoption of exceptional legislation, and with a full view of the actual position of the different interests affected, and of the bearing of the proposed measure upon them and upon the general interests of the country.

"In the present case, the magnitude of the other questions of a more pressing nature into which the committee have had to inquire, has prevented them from devoting more than a small portion of their time to the examination of witnesses upon the carrying question; and the conflicting nature of the evidence adduced, together with the practical difficulty of the points in dispute, tend strongly to impress them with the importance of not attempting to deal with the subject by any precipitate or partial legislation. Another consideration likewise exists which suggests to the committee the propriety of postponing for the present any recommendation to the House to attempt to meet by immediate legislation the peculiar difficulties which are connected with the question of the carriage of goods by railway. The course of litigation which has been long in progress between the great firm of Pickford & Co. *v.* the Grand Junction Railway Company is not yet brought to a final conclusion; and a suit is now pending in the Court of Chancery which may be expected to throw considerable light upon the actually existing legal rights and liabilities of the parties in regard to some of the points which have been most keenly disputed before the committee, and which are necessarily included as important points in any proposed legislation upon the subject. For these reasons the committee content themselves with reporting to the House the evidence which has been taken on the carrying question, and purposely refrain from making any further comments upon it, which might have the effect of prejudging the question in the event of its hereafter becoming the subject of investigation under circumstances better calculated to lead to a complete and satisfactory conclusion."

In another report the Select Committee, Session 1844, No. 166, stated :—

"The attention of the committee has been given incidentally to the control which railway companies possess by means of their station yards over the traffic of the neighbouring districts. It is only by the station yards that the transition can be conveniently made from the railway carriages to other vehicles, and therefore entry

into them becomes necessary in order to insure any freedom in the traffic along the roads which connect the railway with the adjoining districts. At present they are under the exclusive control of the companies.

"The committee do not proceed upon the supposition that the power thus placed in the hands of the companies has been ordinarily abused or pushed beyond its limits; but they are disposed, upon grounds of general principle, to recommend that some restraint should be placed upon it.

"They consider that station yards of railways ought to be under the general control of the company under which accommodation is afforded to the public; but they are also of opinion that vehicles lending themselves to take up or set down passengers, luggage and parcels, ought not to be excluded from the station yards unless in cases where it is required for the purpose of safety and public convenience."

The immediate result of these reports was the passing of 7 & 8 Vict. c. 85. The chief provisions of the act relating to revisions of rates and fares, and to state purchase are:—S. 1. That if after twenty-one years any new railway has made 10 per cent. for three years, Treasury may reduce rates, but are to guarantee 10 per cent. The revised rates and the guarantee to continue for twenty-one years. This section has become practically inoperative. S. 2. That after fifteen years Treasury may buy any new railway for twenty-five years' purchase of the average annual profits for the preceding three years; but if the profits are less than 10 per cent., the amount to be settled by arbitration. S. 3. That no railway less than five miles in length is to be bought; and no branch to be bought without buying whole railway. S. 4 recites that the policy of revision or purchase is not to be prejudged, and that public resources are not to be employed to sustain undue competition with independent companies, and provides that no revision or purchase is to take place without an act of parliament authorising the guarantee or purchase, and determining how it is to be done.

In pursuance of the report of the Committee of 1844, a board was in that year constituted under and within the Board of Trade, the chief duty of which was to report

upon new railway schemes and bills, with reference to their positive and comparative advantage to the public, and especially with reference to questions of extension, amalgamation, and competition. The decisions of this railway board not giving general satisfaction, the government in 1845 intimated that bills would be left as before to the judgment of the Private Bill Committees. These committees in many instances disregarded the reports of the railway board; and as these were found to be practically useless, the board constituted in 1844 was in August 1845 abolished. The Board of Trade, however, could still, if they thought fit, make special reports on questions of public safety, departures from general railway law, and questions involving novel principles or extended considerations of public policy, including amalgamations, &c. &c.

To give encouragement to canals in competing with railways, an Act was passed in 1845 (8 & 9 Vict. c. 28), the preamble of which, after noticing the provisions in the "Railways Clauses Consolidation Act, 1845," giving power to railway companies to vary their rates, declares that "greater competition for the public advantage would be obtained if canal companies, &c. were to have the like powers granted to them in respect of their canals, &c., and the Act accordingly gives to such companies the necessary powers for varying their tolls. In the same session and for the same object, an Act (8 & 9 Vict. c. 42), was passed to enable canal companies to become carriers of goods upon their canals, and to make working arrangements with, and to lease their canals to, other canal companies. In 1847, another Act, 10 & 11 Vict. c. 94, gave canal companies power to borrow money for the above purposes.

In 1846, on account of the large number of bills for railway and canal amalgamations, another Committee of the House of Commons was appointed to consider the subject. The Committee issued two reports, in the first of which they were unable to lay down any positive

extension, and that competition usually ends in combination, and notice the want of some means of compelling proper arrangements for through traffic between the companies. In previous reports the Committee suspended the then amalgamation bills, and recommended that Parliament should not grant amalgamation without securing "freedom and economy of transit from one part of the kingdom to the other."

The fifth report treats largely (1) of amalgamation, (2) of interchange of traffic, and (3) on private bill legislation. The result of the reports of this committee was the passing of the Railway and Canal Traffic Act, 1854 (17 & 18 Vict. c. 31). Its principal features were (1) That every company should afford proper facilities for forwarding traffic, and (2) that no preference should be given. The portion of this Act which relates to compelling railway and canal companies to afford reasonable facilities for forwarding traffic upon their railways and canals was the subject of considerable discussion in the House of Lords before their lordships passed it. Mr. W. Paterson in his "practical statutes" for 1854, states that the majority of the judges objected to undertaking the duty proposed to be committed to them, as they considered it was one of a ministerial rather than a judicial character, and connected with matters about which they were not conversant. Lord Campbell declared on the third reading that:—

"Although a great part of his life had been spent in studying the laws of his country, he was totally unacquainted with railway subjects as well as with the transit of goods by boats."

His lordship said he knew not—

"How to determine what was a reasonable fare, what was undue delay, or within what time trucks and boats should be returned. One of his brethren, however, the only one, the Chief Justice of the Common Pleas, a most zealous and efficient judge, had declared that he could work the bill properly, although he admitted that the duties prescribed by it were not judicial ones."



general rules, but only make suggestions for the guidance of the private bill committees. They recommended that general powers of selling and leasing should not be inserted in private bills; that upon amalgamation the maximum tolls and rates be revised; that, in general, the new maximum should not exceed the lowest maximum of any of the amalgamating companies, and that especial attention should be given to charges for carrying coals. The Committee observed that some important lines had by private arrangement practically come under the same control and management, so that all the evils of amalgamation may be produced without any opportunity for inquiry by Parliament.

In this second report the same Committee considered more especially the question of amalgamation between railways and canals, and were of opinion that they could not for various reasons advise the refusal of amalgamation between railway and canal companies, but only that each case should be thoroughly sifted. They further recommended the establishment of a government department to superintend railways and canals. A committee of the House of Lords sitting at the same time agreed with the recommendation of that of the Commons.

In 1846 an Act was passed constituting the Railway Commission, consisting of five persons, three of whom were paid. Their duties were to report on special cases referred to them, and also upon private bills, and especially on competing schemes and amalgamations. This Commission was abolished in 1851, and its duties re-transferred to the Board of Trade.

In 1853, another select Committee was appointed on account of the many competing schemes of rival companies for the possession of various districts, and the number of amalgamation schemes proposed in that session.

The fourth and fifth reports of that Committee set forth that the tendency of the companies is to union and

extension, and that competition usually ends in combination, and notice the want of some means of compelling proper arrangements for through traffic between the companies. In previous reports the Committee suspended the then amalgamation bills, and recommended that Parliament should not grant amalgamation without securing "freedom and economy of transit from one part of the kingdom to the other."

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The arguments, however, of the then Lord Chancellor prevailed, and it passed into law.

At the instance of the canal interest, the Act 21 & 22 Vict. c. 75, was passed in 1858. By it companies are prohibited from accepting a lease of other canals, except by a special Act. The Railway Clauses Act, passed in 1863 (26 & 27 Vict. c. 92), contains some important sections relating to working agreements between companies and steam vessels. The approval of the Board of Trade to these was necessary; but by section 10 of the Act of 1873, p. 20, the powers and duties of the Board of Trade with respect to working agreements, and those of the Board of Trade under section 35 of the Act of 1863, are transferred to the Railway Commissioners.

In 1865 a Royal Commission was appointed, and their report was issued in 1867. The object of the commission was to consider the subject of railway communication, more especially with a view to a diminution of change and interchange of traffic. The report of this commission is very voluminous, and the questions of legislation, rates and fares, interchange of traffic, and through rate for goods are fully discussed. Notwithstanding the many reports made to Parliament on the subject of railways, very little effect has been given to the principles therein laid down.

In 1872 a joint committee of both Houses of Parliament was appointed to inquire into the subject of the amalgamation of railway companies, with special reference to the Bills for that purpose then before Parliament, and to consider whether any and what regulations should be imposed by Parliament in the event of such amalgamation being sanctioned.

The Committee examined a large number of witnesses (fifty-five in all) representing the principal persons of experience in railway management. Their report alone extends to upwards of fifty pages of a blue book, and the evidence of the witnesses to several hundred. In the

necessarily narrow compass of this introduction, it would be impossible satisfactorily to give extracts from so voluminous a document, especially as this work treats only of an Act of Parliament, the result of a portion of the report.

The suggested regulations of the Committee are in the 71st paragraph of the report, p. 83, and are :—

1. Equal mileage rates.
2. Rates to be fixed according to cost of carriage after adding a certain profit on capital.
3. Determination of terminal charges.
4. Immediate reduction of rates and fares.
5. Subsequent periodical revision of rates and fares.
6. Absolute limitation of dividend.
7. Reduction of rates after dividend has reached a certain percentage, so as to divide extra profit between the company and the public.
8. Classification of rates.
9. Publication of rates.
10. Consolidation of Acts.
11. Workmen's trains.
12. Arrangement of districts.
13. Construction of branch lines.
14. Interchange of traffic, through rates, and running powers.
15. Revision of fares for conveyance of troops.
16. Additional facilities to post-office.
17. A new tribunal.

Proposals as to (1) *equal mileage rates*; and (2) *rates to be fixed by relation to cost and profit on capital* were dismissed by the committee. (3) *Determination of terminal charges*, which are those made by the companies for service in the receipt or delivery of goods over and above the expenses of actual carriage along the line, the committee considered resolved itself in most cases into the question of mileage rates. The result of the committee's opinion is the eleventh section of the act of last

session, containing nine sub-sections, by which the second section of the act of 1854 is explained and amended (for which see p. 23). (4) *Immediate reduction of rates and fares* was a matter which the committee thought was merely temporary. A charge which would give the company ample profit to-day might, through increased economy, be excessive to-morrow. At the same time the committee recommended that full opportunity should be given on every occasion presented, by amalgamation, bills of hearing and redressing any specific complaint that might be made with respect to existing rates and fares; and for this purpose care should be taken that traders or other persons interested were not prevented by any rules of *locus standi* from appearing and urging their case before the committees on the bills. (5) On what principle *the periodical revision of rates and fares* should proceed was a matter which the committee could not determine. That if it were to be purely arbitrary, and if no rule were to be laid down to guide the revisers, the power of revision would amount to a power to confiscate the property of the companies; that it was not likely that parliament would attempt to exercise any such power itself, still less that it would confer such a power on any subordinate authority. (6) *Absolute limitation of dividend*. The conclusion to which the committee arrived was that such would be impracticable. They state that a false impression seems to prevail that parliament have already limited railway dividends to 10 per cent. The only act which touches the subject is the act of 1844, and that act is inoperative. But it was not improbable that railway companies, having regard to the odium which a very wealthy and profitable monopoly is sure to incur will, if they continue prosperous, act as though their dividends were limited, and will find some means of disposing of a large surplus other than that of largely increased dividend. (7) *Division of profit beyond a certain limit between companies and public*. No practical result was come to by

the committee, who stated that the principle of dividing surplus profits between the companies and the public has been adopted in France, but under conditions which illustrate the difficulties which they mentioned. The difficulty of determining the sum available for dividend is met by an inspection and interference with the accounts of the companies, which would scarcely be practicable here; and the difficulty of selecting rates for reduction, although without comparison less than it would be here, was avoided by abandoning reduction altogether, and paying half the surplus profit into the national exchequer. (8) With respect to *new classification of rates*, the committee considered it desirable that the companies should be compelled to adopt as between themselves and the public the clearing-house classification, and to adopt their statutory rates to it; but it further appeared that the clearing-house classification was altered from time to time to meet the varying wants and circumstances of trade, and it seemed therefore desirable that there should be some power of making corresponding alterations in the classification adopted for the public. The exercise of this power the committee thought might be made subject to the approval of the commission, the appointment of which they recommended. (9) *Publication of rates*. The recommendation of the committee can be seen in the 14th section of the act, p. 27. (10) *Consolidation of acts* was, the committee considered, no easy task to insure accuracy, or that no one was prejudiced by the operation. The committee were however of opinion that, whether consolidated or not, the acts relating to each company should be deposited at the office of the Registrar of Joint Stock Companies, with such an index as would enable the public to refer to their contents. (11) *Workmen's trains*. Although the committee thought there were great difficulties in the way of imposing general obligations by statute, it was possible that in certain large towns, as well as in London, circumstances might exist

which called for special provision. The committee therefore recommended that the municipal authorities of all large towns should be authorised to require the companies having stations in such towns to run workmen's trains at given hours and stated prices, on the condition that they, the municipal authority, guarantee to the companies a certain income from such trains, which guarantee they should have power to make good out of the rates. (12) *Future amalgamation and "districting."* The committee made some lengthened observations on this subject, the practical result of which was that each case ought to be dealt with on its own basis. (13) *Construction of branch lines.* The committee thought that any rate-paying district might out of their rates construct the branch required by them; and the railway company of the district should be compelled to receive and forward the traffic, and possibly also to work the railway; but in the present state of local government it would be difficult to work out any such scheme as this. (14) *Interchange of traffic: through rates and running powers.* The conclusions of the committee are embodied in the 11th section of the act, p. 24. (15) *Revision of fares for carrying troops.* The committee thought that these fares should be considerably reduced. (16) *Additional facilities to post-office* are secured by the 18th section of the act, p. 31. (17) *New tribunal.* The result of the committee's recommendation is the appointment of the present railway commissioners, whose powers are enumerated in four to ten of the sections of the act inclusive, p. 4.

To their report the Committee append conclusions, thirty-one in number, the substance of which has been previously stated, and which are too numerous to quote or recapitulate. Some of them are embodied in the Act of last session. Under that Act (The Regulation of Railways Act, 1873), the Railway Commissioners are appointed. To them are transferred the powers previously administered by the Court of Common Pleas under sections

2 & 3 of the Act of 1854. The Commissioners also obtain further powers, including some hitherto possessed by the Board of Trade. Besides administering the Act of 1854, an important part of the duties of the commissioners will be arbitration, which is provided for in the present Act. As the Select Committee suggest, it is not improbable that in future private bills, reference to the commissioners will be substituted for arbitration.

Under the Act the Commissioners have issued general orders, which remain in force unless disapproved in whole or in part by either House of Parliament within two months after they have laid them before the House. This the Commissioners are bound to do immediately after the making thereof, if Parliament be then sitting, or if not, within seven days after the then next meeting of Parliament. The Commissioners have also issued a regulation and directions as to working agreements, for which see p. 202. The Act which received the royal assent on 21st July last is to continue in force for five years after its passing, and thenceforth until the end of the then next session of Parliament.

As yet the Commissioners have not had many cases on which to adjudicate, and the following is a report of those which have come before them.

The Corporation of Dover v. the South-Eastern and the London, Chatham, and Dover Railway Companies, 28th November, 1873. (Before Sir F. Peel and Mr. Macnamara.)

Sometime previously the Commissioners, upon the application of the Town Council of Dover, granted a joint summons against the South-Eastern Railway Company and the London, Chatham, and Dover Railway Company, calling upon them to show cause why a writ of injunction should not issue against them requiring them to desist from giving any undue or unreasonable preference or advantage to the passengers and traffic between London and Margate, Ramsgate, and Deal over those between London and Dover. The complaint then alleged by the Corporation was that passengers were

conveyed to Margate and Ramsgate at third class and ordinary fares, while passengers to Dover by the same trains, separating at Canterbury and Ashford, were charged express fares; that there was exceptional third-class accommodation for Margate and Ramsgate, and none for Dover; and also that preferential rates were charged in the one case at the expense of the other for the conveyance of meat, poultry, and other articles. The application was for a summons calling upon the Corporation of Dover, to show as a preliminary to the hearing of the case, that the Railway and Canal Traffic Act gives the commissioners jurisdiction to deal with fares where they are within the maximum the companies are authorised to charge by their special Acts.

Mr. Harrison, for the London, Chatham, and Dover Company, said the main question which would arise was whether the case was one which came within the 2nd section of the Railway and Canal Traffic Act of 1854. There had already been cases decided in the Court of Common Pleas, and it would be contended that that court would have had no jurisdiction, and that it never was intended that the fares charged by railway companies should be interfered with so long as the companies kept themselves within the maximum fares which they were authorised to charge by statute.

Sir F. Peel pointed out that the complaint referred also to exceptional difficulties in the way of third-class passengers seeking to get to Dover and to exceptional difficulties attaching to the people of Dover and to particular trains.

Mr. Harrison quoted cases of the Caterham Junction Railway and of Jones against the Great Eastern Railway Company. In the latter the passengers were charged from Harwich to London a less sum than those from Colchester to London. This was objected to on the ground of undue preference, but it was held not to be a case in point, and the summons was dismissed.

Mr. Macnamara said the case did not go against the jurisdiction of the Court. On the contrary, it was heard, and dismissed on its merits.

Mr. Harrison admitted that that was so, but added that the Court of Common Pleas, when it decided that the case did not come within the 2nd section of the Act, practically decided that they had no jurisdiction in the matter.

Sir F. Peel inquired what was the exact question of law upon which the railway companies asked the opinion of the Commissioners?

Mr. Harrison said the point was whether any interference with fares came within the powers of the Commissioners, seeing that it was not within the 2nd section of the Railway and Canal Traffic Act of 1854. The 13th section said that complaints might be

made by the public authorities in certain cases, but it was only where there was no contravention of the 2nd section.

Mr. Willis, for the South-Eastern Company, said his application on the part of the South-Eastern Company was identical with that which had been made by Mr. Harrison on behalf of the London, Chatham, and Dover Company. He urged that, even admitting the facts contained in the application of the Corporation of Dover to be true, they did not disclose a right to relief.

The Commissioners granted the summons applied for, and an order, by consent, was also issued calling on the Corporation of Dover to give particulars of the grievances of which they complained. The summons was not proceeded with by the Corporation of Dover, and no decision has been obtained on the question raised by them. Costs, except the costs of the issuing and hearing of the summons, were given against the plaintiffs.

Goddard v. London and South-Western Railway Company, 6th January, 1874. (Before Sir F. Peel, Mr. Macnamara, and Mr. Price.)

The plaintiff appeared in person. Mr. C. W. Wood, Q.C., and Mr. Mangles for the Company.

The facts of the case appear from the judgment of the Court delivered by Sir F. Peel, who said :—

“ This is a complaint of a contravention of section 2 of the Railway and Canal Traffic Act, 1854, the provisions of which the Railway Commissioners, appointed under the Act of 1873, are empowered to carry into effect. The complaint is that the London and South Western Railway Company give an undue preference to Messrs. Chaplin and Horne, their agents in Salisbury, and subject the complainant, Mr. Edmund Goddard, a carrier in Salisbury, to an undue and unreasonable prejudice or disadvantage there and in London, mainly in this respect, that the rebate or deduction allowed him for cartage is insufficient in amount and below its actual cost, and less than the company allow their agents and than they allow themselves. That railway companies must treat all persons and all classes of the public equally is a condition which the legislature has long imposed upon them; and the courts of law have in numerous cases decided, that where companies undertake, in addition to their principal business of carriers by railway, and as subordinate and auxiliary to it, the business of collecting and delivering goods to and from their stations, and charge a carted or single gross rate, for which they not

only carry, but also collect and deliver free of further charge, an inequality is caused if a carrier himself collecting and delivering, and only employing the company to convey from station to station, is charged at the same rate with other and ordinary customers, and that he is overcharged if a deduction is not made to him corresponding to the amount included in the gross rate. If a case of that kind exists, and complaint of it is made to us, and we are satisfied that the practice involves an undue prejudice or undue preference within the Traffic Act, it becomes our duty to issue an injunction to prevent its continuance; and in the case before us, the complainant applies for an injunction to restrain the London and South Western Railway Company from continuing to employ Messrs. Chaplin and Horne on terms that are unduly prejudicial to himself as a carrier, and from continuing to charge him for work that is not done for him by the company, that so he may be put upon an equality with the rest of the public. Goods consigned by railway must, to complete their transport, be carted to and from the stations, as well as conveyed upon the line. Conveyance on the railway is in practice a monopoly of the railway companies, but the service of collection and delivery is open to competition, and the public, common carriers, and the companies can all engage in it. When the service is undertaken by the companies, they have two ways of charging for it. They either make their goods-rate a station to station rate only, and charge separately for cartage, or they make their goods-rate a collected and delivered rate, which includes collection and delivery within a fixed distance or boundary from the stations of the two towns from the one to the other of which the goods are carried on the railway. The companies seldom have both kinds of rates in operation at the same time between any two stations; and, consequently, when the collected and delivered rate is in force, they are usually obliged to allow a rebate or deduction off it in respect of goods which they are employed to carry only, and not to collect and deliver as well. The goods-rates of the railway companies in London north of the Thames are said to be nearly all collected and delivered rates, but the London and South Western Railway Company is the only company on the south side of the river which has adopted that form of goods-rate, and even they have still eighty stations (Southampton and Winchester among them) where goods-rates are station to station rates only. Salisbury is one of the company's stations where the goods-rates are collected and delivered rates, and the rebate allowed off such rates upon goods-traffic between London and Salisbury being 4s. 10d. per ton for goods of any description, viz. 3s. 4d. for London cartage, and 1s. 6d. for Salisbury cartage—one of the complainant's contentions is that the sum of 4s. 10d. is not sufficient allowance as regards either actual

cost, or the actual charge the company makes to the public, nor sufficient to maintain a competition with the company in their capacity of carriers outside their stations. The company do their London cartage by their own carmen and vans, while Salisbury cartage is done by Messrs. Chaplin and Horne as their agents; but this difference of practice is immaterial in the consideration of this part of the case, as is also the fact that the company make a separate and extra charge for cartage in London when they cart beyond the boundary of the district they call No. 1, being the district the price for cartage to any part of which is included in their collected and delivered goods-rates, seeing that other carriers can make similar extra charges for cartage outside that district, without detriment to their positions as competitors in business with the company. The first question to be determined, is whether the rebate of 4s. 10d. per ton is or is not sufficient. As regards the sum of 3s. 4d., which is the proportion of the 4s. 10d. allowed for cartage between the Nine Elms goods-station and any place in the company's first district, the evidence shows that this allowance is about equal to the cost of carting a ton of goods as an average of the whole area of the district, but that it is not a remunerative rate, except under special circumstances, as in the case of the company's hired carters, who obtain generally a full load, besides not unfrequently an order for a return load, and the aid of the company's porters in loading. But if it is shown that the company charge more to the public for cartage than it actually costs, is not this charge a more proper measure of the rebate than the bare cost? We are of opinion that it is, because otherwise the company would have a preference to the extent of the difference over other carriers, and the complainant's customers, if he carted for them at the rate of the rebate, would lose the benefit they would be entitled to, and in paying the gross rate, less only the rebate, would pay to the company part, where no part was due, of the cartage share of that rate, while, if he carted for them at the company's real cartage-rates, there would be in the case supposed of these being higher than the rebate, an excess in the total charge from door to door against that particular class of customers. The general manager, Mr. Archibald Scott, and the goods manager, Mr. Haddow, officers of the company, who were called for the defence, were unable to say how much of the compound goods-rates was due to cartage. Mr. Haddow stated that when in 1860 the rates from Salisbury were converted from station to station rates into collected and delivered rates, the tonnage rates in each class of goods were raised 5s. But the gross rates in the two lowest classes have been raised subsequently, and therefore the proportion due to cartage cannot be positively determined. That the company's charge for cartage and its actual cost are not always identical appears from

their charge for cartage in London in respect of goods to and from Winchester. The rates for Winchester traffic are, as already stated, station to station rates, and cartage therefore is charged separately, and upon a scale increasing from 3*s.* 4*d.* to 7*s.* 6*d.* per ton, according to the class of goods; without going outside the boundary of No. 1 district, upon the proportion of goods in the different classes, it results in such case that the average rate charged for cartage for that district of London is about 4*s.* 4*d.* per ton, or 1*s.* per ton more than the rebate or deduction off the rates allowed for precisely similar work in the case of Salisbury goods. It would not be an unreasonable inference to draw from this, that the Salisbury rates cover similar charges for the similar service; but, upon the whole, we are not prepared to enjoin the application of the Winchester scale to the allowance for Salisbury goods, because that would entail upon carriers a troublesome classifying of the goods they carried; nor are we prepared to raise the allowance by the present average excess of the Winchester scale, because the proportion of goods in the different classes may not be the same in the one case as in the other, or may vary from time to time, and also because we might be setting up a new inequality in favour of carriers of the lowest class of goods; and, lastly, because a calculation would have to be made every time the gross rates were altered, and the rebate raised or lowered accordingly. We think, under the circumstances of this case, and upon the evidence given before us, the proper remedy to be that the company should be required to state in what manner the compound goods-rate is made up, and how much of it is for cartage as distinguished from conveyance on the line. In this way the public would have before them the quoted cartage rates of the company and of other carriers, and could please themselves in weighing the advantages of a single payment and other facilities or conveniences, if they employed the company against any lower or more favourable terms that might be offered by other carriers. The sections 14 and 15 of the Act of 1873 authorize the Railway Commissioners, on the application of any person interested, to require a compound rate to be separated in the manner we have mentioned, and to decide in case of dispute what is a reasonable sum to be paid to a company for collection and delivery and such like services; and we are of opinion that the particular case we are considering would be more equitably settled through those sections of the Act than by the granting of an injunction. The complainant alleges further the insufficiency of the 1*s.* 6*d.* per ton rebate for cartage in Salisbury, and that the company pay Messrs. Chaplin and Horne at more than that rate. Messrs. Chaplin and Horne are the company's agents in Salisbury, and do all their carting. They make no charge to the public, and are paid exclusively by the company at the rate of 2*s.*

per ton for collecting and delivering goods in classes 1 and 2, 2*s.* 6*d.* in classes 3 and 4, and 3*s.* 4*d.* in class 5, averaging, it is stated, a payment of 2*s.* 2½*d.* per ton. There is thus a difference of 8½*d.* per ton in favour of Messrs. Chaplin and Horne; but this difference is explained to be paid to them, not for carting, but for their general services as agents and canvassers for the company in Salisbury and its neighbourhood, and for the influence their canvassing has in increasing the company's traffic. Here, again, the public should know what amount is included in the gross rate for carting in Salisbury, and we also think that when carting agents perform other district services for the company, the payment for such other services should be kept wholly distinct. 1*s.* 6*d.* per ton appears to be the amount generally allowed for carting goods in the country, and Mr. Chaplin, the head of his firm, gave evidence to the effect that the cost of carting in Salisbury does not, on an average, exceed 1*s.* 6*d.* per ton. The complainant also alleges that he is unequally treated in the matter of the rebate on parcels and on "empties." We find, and the company admitted, that they have not always allowed him sufficient in respect of the collection or delivery in London of parcels exceeding 56 lb. in weight, and that he is entitled to a rebate of 2*d.* upon each of such parcels. In Salisbury, the allowance to Messrs. Chaplin and Horne for collecting and delivering parcels is 2*d.* per parcel, or twice the sum allowed to Goddard and others for that service in Salisbury, but we are satisfied by the evidence given on this point that the additional 1*d.* to Messrs. Chaplin and Horne is paid to them in part of their remuneration for agency. As regards "empties," the company also admitted, that while they allowed to Messrs. Chaplin and Horne a cartage of 2*s.* per ton, no similar payment (or rebate, as it would be in his case) had been made to the complainant. We are of opinion that he is entitled to it. The complainant withdrew his complaint against the company for non-fulfilment of the requirements of the Act of 1873, as respects the keeping of a book of rates at the Salisbury station, showing the various goods-rates in force for the time being, and the distances from Salisbury of all the stations or places to which goods are rated from Salisbury. The book was produced before us, and we feel bound to observe was not as clear or complete as it should have been. As regards the remaining complaint, that the company showed partiality in the matter of granting credit to traders in Salisbury by refusing monthly credit accounts to any but customers of Messrs. Chaplin and Horne, it was proved that this was not the case, and that the charge of partiality was not well founded. Our order, therefore, will be in favour of the complainant upon the second and fourth heads of his complaint, and in favour of the company upon the third and fifth. Upon the first and sixth heads we make no order. It will not be necessary

for the complainant to issue a writ of injunction ; but, if our order should be disobeyed by the company, it will be competent for him to apply to us for an order of attachment, or other order, for the purpose of enforcing our decision, as prescribed by the 3rd section of the Railway and Canal Traffic Act, 1854, the jurisdiction conferred by that Act being given to us by the 6th section of the Regulation of Railways Act, 1873. We adjudge the complainant to be entitled to his costs."

Buckfastleigh and Totnes Railway Company v. South Devon Railway Company, 19th February, 1874. (Before Sir F. Peel, Mr. Macnamara, and Mr. Price.)

In this case an application was made to the railway commissioners to hear and determine certain differences between the Buckfastleigh and Totnes Railway Company and the South Devon Railway Company, in lieu of a reference to arbitration.

Mr. Littler, Q.C., and Mr. Batten appeared for the plaintiffs; and Mr. Lopes, Q.C., and Mr. C. Bowen for the defendants.

The point involved was the construction of an agreement entered into between the two companies in 1865 in reference to the working of a small branch line from Buckfastleigh to Totnes and Ashburton. It was contended for the plaintiffs that, under the agreement, an equal share of the terminal charges for traffic over the Buckfastleigh line was to be paid by each company, with a mileage rate for conveyance of goods. The defendants' company had not carried out the agreement generally, and in particular in the case of the conveyance of certain goods from Staverton to Plymouth, for, whereas the proper proportion to have been paid by the Buckfastleigh Company was £32, they had only paid £8. The South Devon had also charged 1s. a mile on a horse-tramway from Totnes to Totnes Quay; though the act under which the line was constructed fixed the maximum at 4d. a mile.

The Commissioners, having heard evidence, postponed their decision, which was delivered on 21st February by Sir F. Peel, who said :

"This is a case of certain differences between two railway companies as to the right construction of a working agreement they have entered into, in relation to its bearing upon an account between them, and the case is brought before us for our decision, instead of being referred to arbitration under the 8th section of the Regulation of Railways Act, 1873. The railway from Ashburton to the Totnes Station of the South Devon Company, and thence to Totnes Quay, on the River Dart, is the property of the Buckfastleigh Company,

but is maintained and worked by the South Devon Company; and the working agreement provides that the South Devon Company's 'gross receipts' from the railway shall be divided in certain proportions between that company and the Buckfastleigh Company, and shall include one half of all terminal charges and a mileage proportion in respect of the Buckfastleigh Railway of all through fares, rates and charges. In the statement or account of the traffic and receipts of that railway for the half-year to the 30th June, 1873, the South Devon Company have treated as through traffic only the traffic to and from the railway of a third company, and as regards any terminal charges on traffic between their own line and the Buckfastleigh line have placed to the credit of the gross receipts a mileage proportion only of such charges, instead of one-half, as contended for by the Buckfastleigh Company, according to what they maintain to be the true intent and effect of the 23rd article of the agreement. The question turns in a great measure upon the wording of that article; and having regard thereto the Commissioners do not see any distinction made by the agreement between the lines the property of the South Devon Company and the lines of any other company as regards traffic to and from the Buckfastleigh Railway, and as there is no reason to doubt that terminal charges form a part of the goods-rates in both cases, we are of opinion that for either description of this traffic one-half of the terminal charges should be carried to the account of the gross receipts. In the same half-year the South Devon Company appear further, as regards traffic to and from the railway of a third company—as, for instance, the Bristol and Exeter—to have considered the terminal charges, of which one-half belongs to the gross receipts, to mean only such charges as they received for the station at their own end; but the Commissioners are of opinion that they include terminal charges for both ends. By the Buckfastleigh, Totnes, and South Devon Railway Act, 1864, the short railway connecting the South Devon Railway with the Totnes Quay, on the River Dart, is to be worked by horse-power only; and the sum the South Devon Company have demanded for haulage of traffic on this branch is in excess of the maximum rate authorised by that act, if such rate applies as well where horse-power is used as in the case of locomotive engines. We are of opinion that it does so apply, and that the South Devon Company have no power to charge a rate on this branch exceeding the limits imposed by the act. The Buckfastleigh Company complain of deductions made from gross receipts before division, on account of cartage and delivery. The Commissioners think that in the case of cartage rates a reasonable deduction on that account is not inconsistent with the provisions of the working agreement, and we do not find that any undue amount has been deducted on that account. Charges for such services when per-

formed by the South Devon Company stand apart from receipts accruing from the line, and may therefore be deducted prior to division. The last complaint of the Buckfastleigh Company as to the route by which the South Devon Company work the Buckfastleigh traffic with their Plymouth and Tavistock branch has not been made out to the satisfaction of the Commissioners. It appears that half the additional mileage run over past the junction is excluded in calculating the division of receipts, and that a want of accommodation at the junction prevents for the present a more direct route being adopted. The regulation on this subject of the railways clearing-house has not, in our view, been adopted into the agreement between the companies, and we do not consider the references which occur in it to the clearing-house to have the effect of entitling the Buckfastleigh Company to require the division of any portion of the gross receipts to be governed by that regulation. Our order as to costs will be in favour of the Buckfastleigh Company."

The Practice of the Railway Commissioners' Courts.

PART I.

PRACTICE UNDER "THE REGULATION OF RAILWAYS ACT, 1873," 36 & 37 VICTORIA, CHAPTER 48.

"AN Act to make better Provision for carrying into effect the Railway and Canal Traffic Act, 1854, and for other Purposes connected therewith. [21st July, 1873.]

"Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :

Preliminary.

"1. This Act may be cited as the Regulation of Railways Act, 1873.¹ Short title.

"2. This Act shall, except as herein is otherwise expressly provided, come into operation on the first day of September one thousand eight hundred and seventy-three, which date is in this Act referred to as the commencement of this Act. Commence-
ment of Act.

"3. In this Act—

"The term 'railway company' includes any person being the owner or lessee of or working any railway in the United Definitions.

¹ As to the general practice under the Act, except that having special reference to particular sections, see notes on Section 6, *post*, p. 8 *et seq*.

The law under the Railway and Canal Traffic Acts, &c., will be found in Part II., *post*.

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Kingdom constructed or carried on under the powers of any Act of Parliament :

“The term ‘canal company’ includes any person being the owner or lessee of, or working, or entitled to charge tolls for the use of any canal in the United Kingdom constructed or carried on under the powers of any Act of Parliament :

“The term ‘person’ includes a body of persons corporate or unincorporate :

“The term ‘railway’ includes every station, siding, wharf, or dock of or belonging to such railway and used for the purposes of public traffic :

“The term ‘canal’ includes any navigation which has been made under or upon which tolls may be levied by authority of Parliament, and also the wharves and landing-places of and belonging to such canal or navigation, and used for the purposes of public traffic :

“The term ‘traffic’ includes not only passengers and their luggage, goods, animals, and other things conveyed by any railway company or canal company, but also carriages, waggons, trucks, boats, and vehicles of every description adapted for running or passing on the railway or canal of any such company :

“The term ‘mails’ includes mail bags and post-letter bags :

“The term ‘special act’ means a local or local and personal Act, or an Act of a local and personal nature, and includes a Provisional Order of the Board of Trade confirmed by Act of Parliament, and a certificate granted by the Board of Trade under the Railways Construction Facilities Act, 1864 :

“The term ‘the Treasury’ means the Commissioners of Her Majesty’s Treasury for the time being :

“The term ‘superior court’ means in England any of Her Majesty’s Superior Courts at Westminster, in Ireland any of Her Majesty’s Superior Courts at Dublin, and in Scotland the Court of Session.”

Most of the above terms are explained in somewhat similar language in the Railway and Canal Traffic Act of 1854. It is important to bear in view the definition of the term "Special Act." The "Railways Construction Facilities Act, 1864," is 27 & 28 Vict. c. 121. The form of the certificate of the Board of Trade is No. 2 of the schedule of that Act, and is printed in the Appendix.

The Act of 1854, which is printed at length in the Appendix, is not so comprehensive with respect to its definition of "railway," which now extends to a siding dock or wharf. The construction of the term "the railway" in a local Act was decided in a leading case under the following circumstances. The Bristol and Exeter Railway Company was incorporated by the 6 Will. 4, c. 36, and the Bristol and Exeter Railway and certain branches were made under that and subsequent Acts. The 8 & 9 Vict. c. 55 was passed—

The term "the railway" defined.

"To amend the Acts relating to the Bristol and Exeter Railway Company and to authorize the formation of a junction railway and several branch railways connected with the same."

Sect. 19 of the last-mentioned Act limited the charge for the carriage of certain articles conveyed on "the railway." The words "the railway" in other parts of the Act were used sometimes to denote the original line, and sometimes merely the junction and branch railways authorized by the Act. The Court of Exchequer held that "the railway" in sect. 19 applied to the whole line. *Garton v. Bristol and Exeter Railway Company*, 28 L. J. Exch. 169; affirmed in error *sub nom. Bristol and Exeter Railway Company v. Garton*, 5 Jur. (N. S.) Exch. 1172; 33 L. T. 306, and upon appeal to the House of Lords, 7 Jur. (N. S.) 173; 3 L. T. (N. S.) 251; 8 H. of L. Cas. 477. See also *Midland Railway Company v. Ambergate and Eastern Junction Railway*, 10 Hare. 359. By the "Railways Clauses Consolidation Act, 1845," applicable to England and Ireland, and by the "Railways Clauses Consolidation (Scotland) Act 1845," the expression "the railway"

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means "the railway works by the special Act authorized to be constructed."

The following interpretation clause in the Act of 1854 is omitted from the present Act—

"A station, terminus, or wharf shall be deemed to be near another station, terminus, or wharf, when the distance between such stations, termini, or wharves shall not exceed one mile, such stations not being situate within five miles from *St. Paul's Church* in London."

Appointment and Duties of Railway Commissioners.

Appointment
of Railway
Commis-
sioners.

"4. For the purpose of carrying into effect the provisions of the *Railway and Canal Traffic Act, 1854*, and of this Act, it shall be lawful for her Majesty, at any time after the passing of this Act, by warrant under the royal sign manual, to appoint not more than three Commissioners, of whom one shall be of experience in the law and one of experience in railway business, and not more than two Assistant Commissioners, and upon the occurrence of any vacancy in the office of any such Commissioner or Assistant Commissioner from time to time in like manner to appoint some fit person to fill the vacancy. It shall be lawful for the Lord Chancellor, if he think fit, to remove for inability or misbehaviour any Commissioner appointed in pursuance of this Act.

"The three Commissioners appointed under this Act (and in this Act referred to as the Commissioners) shall be styled the *Railway Commissioners*, and shall have an official seal which shall be judicially noticed. They may act notwithstanding any vacancy in their number. The said Assistant Commissioners shall hold office during the pleasure of her Majesty.

Commis-
sioners not to
be interested
in railway or
canal stock.

"5. Any person appointed a Commissioner under this Act shall within three calendar months after his appointment absolutely sell and dispose of any stock, share, debenture stock, debenture bond, or other security of any railway or canal company in the United Kingdom which he shall at the time of his appointment own or be interested in for his own

benefit; and it shall not be lawful for any person appointed a Commissioner under this Act, so long as he shall hold office as such Commissioner, to purchase, take, or become interested in for his own benefit any such stock, share, debenture stock, debenture bond, or other security; and if any such stock, share, debenture stock, debenture bond, or other security, or any interest therein, shall come to or vest in such Commissioner by will or succession, for his own benefit, he shall within three calendar months after the same shall so come to or vest in him absolutely sell and dispose of the same or his interest therein.

“It shall not be lawful for the Commissioners, except by consent of the parties to the proceedings, to exercise any jurisdiction by this Act conferred upon them in any case in which they shall be, directly or indirectly, interested in the matter in question.

“The Commissioners shall devote the whole of their time to the performance of their duties under this Act, and shall not accept or hold any office or employment inconsistent with this provision.

“6. Any person complaining of anything done or of any omission made in violation or contravention of section 2 of the Railway and Canal Traffic Act, 1854, or of section 16 of the Regulation of Railways Act, 1868, or of this Act, or of any enactment amending or applying the said enactments respectively, may apply to the Commissioners, and upon the certificate of the Board of Trade alleging any such violation or contravention any person appointed by the Board of Trade in that behalf may in like manner apply to the Commissioners; and for the purpose of enabling the Commissioners to hear and determine the matter of any such complaint, they shall have and may exercise all the jurisdiction conferred by section 3 of the Railway and Canal Traffic Act, 1854, on the several courts and judges empowered to hear and determine complaints under that Act; and may make orders of like nature with the writs and orders authorized to be issued and made by the said courts and judges and the

Transfer to
Commis-
sioners of
jurisdiction
under 17 & 18
Vict. c. 31,
s. 3.

6 THE REGULATION OF RAILWAYS ACT, 1873.

said courts and judges shall, except for the purpose of enforcing any decision or order of the Commissioners, cease to exercise the jurisdiction conferred on them by that section."

S. 2 of Act of
1854.

It may here be convenient to quote section 2 of the Act of 1854, which enacts that,—

"Every railway company, canal company, and railway and canal company, shall, according to their respective powers, afford all reasonable facilities for the receiving and forwarding and delivering of traffic upon and from the several railways and canals belonging to or worked by such companies respectively, and for the return of carriages, trucks, boats, and other vehicles, and no such company shall make or give any undue or unreasonable preference or advantage to or in favour of any particular person or company, or any particular description of traffic in any respect whatsoever, nor shall any such company subject any particular person or company, or any particular description of traffic, to any undue or unreasonable prejudice or disadvantage in any respect whatsoever; and every railway company and canal company, and railway and canal company, having or working railways or canals which form part of a continuous line of railway or canal, or railway and canal communication, or which have the terminus station or wharf of the one near the terminus station or wharf of the other, shall afford all due and reasonable facilities for receiving and forwarding all the traffic arriving by one of such railways or canals by the other, without any unreasonable delay and without any such preference or advantage or prejudice or disadvantage as aforesaid, and so that no obstruction may be offered to the public desirous of using such railway or canal, or railways and canals, as a continuous line of communication, and so that all reasonable accommodation may, by means of the railways and canals of the several companies, be at all times afforded to the public in that behalf."

S. 3 of Act of
1854.

Section 3 of the Act of 1854 provided the remedy for non-performance or violation of the foregoing section, and the remedy and jurisdiction are now transferred to the Commissioners. The section enacted that—

"It shall be lawful for any company or person complaining against any such companies or company of anything done or of any omission made in violation or contravention of this Act, to apply in a summary way by motion or summons in *England* to Her Majesty's Court of Common Pleas at *Westminster*, or in *Ireland* to any of Her Majesty's Superior Courts in *Dublin*, or in *Scotland* to the Court of Session in *Scotland*, as the case may be, or to any judge of any such court; and upon the certificate to Her Majesty's Attorney

General in *England* or *Ireland* or Her Majesty's Lord Advocate in *Scotland*, of the Board of Trade alleging any such violation or contravention of this Act by any such companies or company it shall also be lawful for the said Attorney-General or Lord-Advocate to apply in like manner to any such court or judge, and in either of such cases it shall be lawful for such court or judge to hear and determine the matter of such complaint; and for that purpose, if such court or judge shall think fit, to direct and prosecute in such mode and by such engineers, barristers, or other persons as they shall think proper, all such inquiries as may be deemed necessary to enable such court or judge to form a just judgment on the matter of such complaint; and if it be made to appear to such court or judge on such hearing or on the report of any such person, that anything has been done or omission made in violation or contravention of this Act, by such company or companies it shall be lawful for such court or judge to issue a writ of injunction or interdict, restraining such company or companies from further continuing such violation or contravention of this Act, and enjoining obedience to the same; and in case of disobedience of any such writ of injunction or interdict it shall be lawful for such court or judge to order that a writ or writs of attachment or any other process of such court incident or applicable to writs of injunction or interdict, shall issue against any one or more of the directors of any company, or against any owner, lessee, contractor, or other person failing to obey such writ of injunction or interdict; and such court or judge may also, if they or he shall think fit, make an order directing the payment by any one or more of such companies of such sum of money as such court or judge shall determine not exceeding for each company the sum of two hundred pounds for every day, after a day to be named in the order, that such company or companies shall fail to obey such injunction or interdict; and such monies shall be payable as the court or judge may direct either to the party complaining, or into court to abide the ultimate decision of the court or to Her Majesty, and payment thereof may without prejudice to any other mode of recovering the same, be enforced by attachment or order in the nature of a writ of execution, in like manner as if the same had been recovered by decree or judgment in any superior court at *Westminster* or *Dublin*, in *England* or *Ireland*, and in *Scotland* by such diligence as is competent on an extracted decree of the Court of Session; and in any such proceeding as aforesaid, such court or judge may order and determine that all or any costs thereof or thereon incurred shall and may be paid by or to the one party or the other, as such court or judge shall think fit; and it shall be lawful for any such engineer, barrister, or other person if directed to so do by such court or judge, to receive evidence on oath relating to the matter of any such inquiry, and to administer such oath."

The "Regulation of Railways Act, 1868," is 31 & 32 Vict., c. 119. Section 16, above referred to, enacts:—

Provision for securing equality of treatment where railway company works steam vessels, 31 & 32 Vict. c. 119, s. 16.

"Where a company is authorized to build, or buy, or hire, and to use, maintain, and work, or to enter into arrangements for using, maintaining, or working steam vessels for the purpose of carrying on a communication between any towns or ports, and to take tolls in respect of such steam vessels, then and in every such case tolls shall be at all times charged to all persons equally and after the same rate in respect of passengers conveyed in a like vessel passing between the same places under like circumstances; and no reduction or advance in the tolls shall be made in favour of or against any person using the steam vessels in consequence of his having travelled or being about to travel on the whole or any part of the company's railway or not having travelled or not being about to travel on any part thereof, or in favour of or against any person using the railway in consequence of his having used or being about to use, or his not having used or not being about to use the steam vessels; and where an aggregate sum is charged by the company for conveyance of a passenger by a steam vessel and on the railway, the ticket shall have the amount of toll charged for conveyance by the steam vessel distinguished from the amount charged for conveyance on the railway. The provisions of the Railway and Canal Traffic Act, 1854, so far as the same are applicable, shall extend to the steam vessels and to the traffic carried on thereby."

Application or Complaint to the Commissioners.

Form of application generally.

Every application made to the Commissioners must be in writing or in print, or partly in writing and partly in print, and be signed by the applicant, or in the case of a corporate body or company, or local harbour board, being the applicant, be sealed with their seal, and signed by their secretary, or other officer acquainted with the facts stated in the application. It must contain a clear and concise statement of the facts, the grounds of application, and of the relief or remedy to which the applicant claims to be entitled. It must be divided into paragraphs, each of which, as nearly as may be, must be confined to a distinct portion of the subject, and every paragraph must be numbered consecutively. It must be endorsed with the name and address of the applicant, and if there be an attorney acting for him in the matter, with the name

and address of such attorney ; and if he be an agent for another attorney in the matter, then also with the name and address of such other attorney. (*General Order No. 2.*) The application must be according to Form No. 1, in the Appendix, or to the like effect.

Every application made to the Commissioners under this as well as the thirteenth section, must be for a summons calling upon the company complained of to show cause why a writ of injunction should not issue against them, enjoining them to do or to desist from doing the acts therein specified. (*Order No. 3.*)

Under ss. 6
and 13.

Any application should be left with the Registrar to the Commissioners at their offices, with three copies thereof, and with any documents, maps, plans, time-tables, and special Acts referred to therein, or which may be useful in explaining or supporting the same. The Registrar gives a receipt for these, which will be according to Form No. 2, in the Appendix, and he enters particulars of the application, together with the date of its being left with him, in a book kept for that purpose. The Registrar makes out a list of the applications so left, according to the order in which they are received by him ; and this list can be inspected at the office during office hours, and is put upon a notice board appropriated to proceedings under the Act. The applications are heard by the Commissioners so far as practicable, according to the order in which they are entered upon the list. (*Order 13.*)

How left at
the Commis-
sioners' offices.

If the Commissioners, at any stage of the proceedings, think fit to direct inquiries to be made under section 3 of the "Railway and Canal Traffic Act, 1854," or section 25 of this Act, they give notice thereof to the parties to the application, and can stay proceedings, or any part of the proceedings thereon, until further notice from them. (*Order 16.*)

Inquiries
under this Act
or the Act of
1854.

Consent Cases.

In all cases the parties can, by consent in writing,

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Parties dispensing with formal proceedings.

dispense with the formal proceedings mentioned in the General Orders, or some portions of them; and orders by consent can be drawn up, and, if approved of by the Commissioners, are sealed with their seal. (*Order 17.*)

Writ of Summons.

Hearing of application for leave to issue.

Unless the parties consent as above, and unless the applicant should have received notice of the suspension of proceedings within the period of five days, he can, at the expiration of that period, apply to the Registrar for an appointment when his application may be heard, and the Registrar then gives him an appointment in writing, stating the day and hour when the application is to be heard by the Commissioners. It is then, if practicable, heard, and the facts stated in the application are proved by affidavit or otherwise. The Commissioners then grant or refuse leave to issue a writ of summons, and the granting or refusal is endorsed on the application. (*Order 18.*)

Issuing.

If leave to issue a writ of summons be granted, the applicant or his attorney prepares the same according to Form No. 3 (Appendix); and it must be endorsed with the name and residence and addition of the applicant, and, if there be an attorney, the name and address of the attorney, and, if he be an agent for another attorney in the matter, then also the name and address of the other attorney. It must also be subscribed with a memorandum, that the defendants shall put in an answer to the application within ten days from the service of the writ. The writ of summons, and a copy or copies, and a copy of the application, for the purpose of service, are sealed by the Registrar. (*Order 19.*)

Service.

A copy of the writ of summons together with a copy of the application is served by leaving the same with the secretary or other chief clerk of the defendants at their principal office in any part of the United Kingdom, or if service cannot thus be effected, then in such manner as the Commissioners may direct. (*Order 20.*)

The person serving the writ and application must forthwith endorse on the writ the day of the month of the service, and affidavit of service of the writ and application, stating the day on which service was made, must thereupon be left with the Registrar. (*Order 21.*)

Endorsement
of service.

Time for Appearance and Showing Cause.

The writ of summons requires the defendants to appear before the Commissioners at the place therein mentioned in twenty days from the service to show cause against the application, but the Commissioners can enlarge the time for appearance and showing cause. (*Order 22.*)

How stated
in writ of
summons.

Answer.

Within ten days from the service of the writ of summons, or within any further or extended time, as may be fixed by a special order of the Commissioners, the defendants must deliver to the applicant or to his attorney a printed or written or partly printed and written statement, containing in a clear and concise form their answer to the application, and leave four copies with the Registrar, together with any documents that may be useful in explaining or supporting it, and the Registrar gives a receipt for the same. The answer can admit the whole or any part of the application. It must be divided into paragraphs numbered consecutively, and it must be sealed with the seal of the company and signed by the person actually making the answer, and who is acquainted with the facts therein stated. It must be endorsed with the name and address of the defendants, and, if there be an attorney acting for them in the matter, with his name and address, and if he be agent for another attorney in the matter, then also with the name and address of such other attorney. It must be in form No. 4 in the Schedule to the General Orders (Appendix), or to the like effect. (*Order 23.*)

Time for de-
livery and
form of an-
swer.

The Commissioners may at any time require the whole or any part of the answer to be verified by affidavit, upon

Verification
of answer.

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giving a notice to that effect to the defendants, and if the notice be not complied with, the answer can be set aside, or such part of it as is not verified according to the notice, struck out. (*Order 24.*)

Reply.

Time for delivery and form of reply.

Within four days from the delivery of the answer to the applicant or within any further or extended time as may be fixed by a special order of the Commissioners, he must deliver a reply thereto to the defendants and four copies to the Registrar, and can object to the answer as being insufficient, stating the grounds of the objection or deny the facts stated therein, or admit the whole or any part of the facts. The reply must be signed by the applicant, and be according to form No. 5 in the Schedule to the General Orders (Appendix), or to the like effect. (*Order 25.*)

Power to direct and settle Issues.

Commissioners may direct issues.

If it appear to the Commissioners at any time that the statements in the application or answer or reply do not sufficiently raise or disclose the issues of fact in dispute between the parties, they can direct them to prepare issues, and these, if the parties differ, are settled by the Commissioners. (*Order 26.*)

Preliminary Questions of Law.

Power to raise and decide preliminary questions of law.

The Commissioners have power to settle any question of law which it appears to them convenient to decide before further proceeding with the case. This question can be raised for their opinion either by special case or in such other manner as they may deem expedient. All such further proceedings as the decision of the question of law might render unnecessary can be stayed. (*Order 27.*)

Preliminary Meeting.

Commissioners may

The Commissioners can at any time before the hearing

of the application, if it appear to them to be to the advantage of the parties, hold a preliminary meeting for the purpose of fixing or altering the place of hearing, determining the mode of conducting the inquiry, the admitting of certain facts, or the proof of them by affidavit, or for any other purpose. The Commissioners can hold such meeting upon giving notice to the parties, and can thereupon make such order as should seem to them fit under the circumstances. (*Order 28.*)

hold preliminary meeting.

The Commissioners can also, if they think fit, instead of holding a preliminary meeting, communicate with the parties in writing, and require answers to such inquiries as they might think fit to make. (*Order 29.*)

Commissioners may communicate with parties.

Production and Inspection of Documents.

Either party is entitled, at any time before or at the hearing of the case, to give notice in writing to the other party in whose application, or answer, or reply, reference is made to any document, to produce it for the inspection of the party giving the notice or of his attorney, and to permit him to take copies, and any party not complying with the notice is not afterwards at liberty to put any such document in evidence, unless he satisfy the Commissioners that he had sufficient cause for not complying with the notice. (*Order 30.*)

Documents referred to in statements.

Notice to Produce.

Either party can give to the other a notice in writing to produce documents relating to any matters in difference (specifying the same) which are in the possession or control of the other party; and if the notice be not complied with, secondary evidence of the contents of the documents can be given. (*Order 31.*)

How notice to produce to be given.

Notice to admit.

Either party can give to the other party a notice in

How notice to admit to be

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given, and
effect thereof.

writing to admit any documents saving all just exceptions; and in case of neglect or refusal to admit after the notice, the costs of proving such documents must be paid by the party neglecting or refusing, whatever the result of the application may be, unless at the hearing the Commissioners certify that the refusal to admit was reasonable, and no costs of proving a document are allowed unless the notices be given, except where the omission to give the notice is in the opinion of the taxing master a saving of expense. (Order 32.)

The Hearing.

Power of Com-
missioners to
proceed *ex*
parte.

If the applicant does not appear at the time and place appointed for the hearing, the Commissioners can dismiss the application, and if the defendants do not appear, and the Commissioners are satisfied that the summons was duly served, they can hear and determine the application *ex parte*, and if at any adjournment of the hearing the parties or either of them do not appear the Commissioners can decide the case in their absence. (Order 34.)

Witnesses and Evidence at the Hearing.

Attendance of
witnesses how
enforced, and
rules appli-
cable thereto.

The attendance of witnesses, with or without documents, is enforced in the same manner as it is now enforced in a superior court of law, and the proceedings for that purpose are in the same form, *mutatis mutandis*, and they are sealed by the Registrar, and can be served in any part of the United Kingdom. The witnesses are entitled to the same protection as when subpoenaed or cited to attend in a superior court of law, and the laws and practice now in force, relating to witnesses in a superior court of law apply to them in proceedings before the Commissioners. (Order 33.)

Evidence to
be *vivâ voce*
except in cer-
tain cases.

In the absence of any agreement between the parties, the witnesses at the hearing are examined *vivâ voce*, but the Commissioners can at any time for sufficient

reason order that any particular facts may be proved by affidavit, or that the affidavit of any witness may be read at the hearing, on such conditions as they think reasonable, or that any witness whose attendance ought for some sufficient cause to be dispensed with, be examined by interrogatories, or otherwise, before a person to be appointed by them for that purpose, provided that when it appears to the Commissioners that the other party *bonâ fide* desires the production of a witness for cross-examination, and that such witness can be produced, an order is not made authorizing the evidence of such witness to be given by affidavit. Depositions taken before an Assistant Commissioner or other person authorized to take them, can be read at the hearing, unless the Commissioners otherwise order. (*Order 35.*)

The Commissioners can require further evidence to be given either *vivâ voce* or by affidavit or by deposition taken before an Assistant Commissioner or other person appointed by them for that purpose. (*Order 36.*)

Commissioners may require further evidence.

The hearing of the case when once commenced proceeds, so far as in the judgment of the Commissioners is practicable, from day to day. (*Order 37.*) But they can from time to time adjourn any proceedings before them. (*Order 50.*)

Hearing to proceed from day to day.

Judgment of the Commissioners.

After hearing the case the Commissioners either dismiss the application, or make an order in favour of the defendants, or reserve their decision, or (subject to the right of appeal in the Act,) make such other order upon the application as may be warranted by the evidence, and may seem to them just. (*Order 38.*)

Form of judgment of Commissioners.

The Commissioners can give their decision in writing, and it is sent or delivered to the respective parties. It is not necessary to hold a Court merely for the purpose of giving a decision. (*Order 39.*)

Judgment may be in writing, and sent or delivered to the parties.

Interlocutory Applications.

Interlocutory applications how heard.

Interlocutory applications are heard by the Commissioners upon summons duly served on the person called upon to answer the application, and can be determined in a summary way. Evidence in such cases may be given by affidavit, but the Commissioners can order the attendance for cross-examination of the person making any affidavit. (*Order 44.*)

Affidavits.

Affidavits how framed.

Affidavits must be confined to such facts as the witness is able of his own knowledge to prove, except on interlocutory motions, on which statements as to his belief with the grounds thereof may be admitted. The costs of every affidavit which unnecessarily sets forth matters of hearsay or argumentative matter, or copies or extracts from documents, must be paid by the party using or filing the same. (*Order 45.*)

Filing of affidavits and office copies.

Affidavits left with the Registrar or used before the Commissioners are filed in their office, and applications, answers, and replies, together with documents left therewith at the office, are also filed there, and office copies are given by the Registrar upon request of the parties. (*Order 46.*)

Amendment.

Power of Commissioners to amend.

The Commissioners can at any stage of the proceedings allow them to be amended or can order to be struck out any matters which may tend to prejudice, embarrass, or delay, the fair hearing of the case, and amendments are made as may be necessary for the purpose of determining the real questions in controversy between the parties; (*Order 51.*) but no proceedings under the Act are defeated by any formal objection. (*Order 52.*)

Formal objections not to prevail.

Practice of Superior Courts of Law when applicable.

In any case not expressly provided for by the Act or by the General Orders, the principles of practice in the superior courts of law can be adopted and applied at the discretion of the Commissioners to proceedings before them. (Order 54.)

Discretion of Commissioners in cases not expressly provided for.

Computation of Time.

In all cases in which any particular number of days not expressed to be clear days is prescribed by the Act or by the General Orders, the same are reckoned exclusively of the first day and inclusively of the last day, unless the last day happen to fall on a Sunday, Christmas Day, or Good Friday, or a day appointed for a public fast or thanksgiving, in which case the time is reckoned exclusively of that day also. (Order 47.)

How time computed.

The days between Thursday next before and the Wednesday next after Easter Day and Christmas Day and the three following days are not reckoned or included in any proceedings under the Act. (Order 48.)

What days to be excluded.

Fees.

See notice under the "Public Offices Fees Act, 1866," as to the fees taken in relation to any proceeding before the Commissioners. (Appendix.)

Fees.

"7. Where the Commissioners have received any complaint alleging the infringement by a railway company or canal company of the provisions of any enactment in respect of which the Commissioners have jurisdiction, they may, if they think fit, before requiring or permitting any formal proceedings to be taken on such complaint, communicate the same to the company against whom it is made, so as to afford

Power for Commissioners to enable companies to explain alleged violation of law.

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them an opportunity of making such observations thereon as they may think fit."

Communica-
tion by Com-
missioners to
company com-
plained of.

If the Commissioners think fit in pursuance of this section to communicate the application to the company against whom it is made, so as to afford them an opportunity of making observations thereon before requiring or permitting any formal proceedings to be taken thereon, they give notice thereof to the applicant within five days from the date of the application having been left at their office, and thereupon all formal proceedings thereon are suspended until further notice from the Commissioners to the applicant. (*Order 14.*)

Commissioners
requiring fur-
ther informa-
tion.

The Commissioners can also within this period of five days require further information or particulars or documents from the applicant, and can suspend all formal proceedings upon the application until satisfied in this respect. (*Order 15.*)

Differences
between rail-
way and canal
companies to
be referred
to Commis-
sioners.

"8. Where any difference between railway companies or between canal companies, or between a railway company and a canal company, is, under the provisions of any general or special Act, passed either before or after the passing of this Act, required or authorized to be referred to arbitration, such difference shall at the instance of any company party to the difference and with the consent of the Commissioners be referred to the Commissioners for their decision in lieu of being referred to arbitration: Provided, that the power of compelling a reference to the Commissioners in this section contained shall not apply to any case in which any arbitrator has in any general or special Act been designated by his name or by the name of his office, or in which, a standing arbitrator having been appointed under any general or special Act, the Commissioners are of opinion that the difference in question may more conveniently be referred to him."

Form of
application.

Every application made to the Commissioners under this section (unless both parties consent to refer the

difference to the Commissioners) is for a summons calling upon the other party to the difference to show cause why it should not be referred to the Commissioners for their decision in lieu of being referred to arbitration. The applicant must also state whether or not it is a case in which any arbitrator has in any general or special Act been designated by his name or by the name of his office, or in which a standing arbitrator has been appointed under any general or special Act. (*Order 4.*)

The Commissioners may exercise their jurisdiction by any one or two of their number in cases under this section, and on the hearing of applications for leave to issue a summons, and on all interlocutory applications. (*Order 53.*)

Commissioners acting separately.

It is not improbable that some arbitrations by the Board of Trade under Part VI. of 31 & 32 Vict. c. 119 ("The Regulation of Railways Act, 1868"), will now be conducted by the Commissioners, and that were the Board of Trade required to make an award or to decide a difference in any case in which railway companies are the parties, the Board instead of appointing an arbitrator would refer the matters in dispute to the Commissioners.

Arbitration by Commissioners instead of Board of Trade.

"9. Any difference to which a railway company or canal company is a party, may, on the application of the parties to the difference, and with the assent of the Commissioners, be referred to them for their decision."

Power to refer differences to Commissioners.

An application made to the Commissioners under this section must be signed by all the parties to the difference, or in the case of a corporate body, sealed with their seal, and be for permission to refer the difference to the Commissioners for their decision. (*Order 5.*)

Form of application.

As in the previous section the Commissioners may under this section exercise their jurisdiction by any one or two of their number. (*Order 53.*)

This section gives power to refer to the Commissioners differences to which a railway or canal company is a

Both parties must agree to reference.

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party, and is to be distinguished from the previous section which treats of differences to which railway or canal companies *alone* are the parties. Under this section both parties must agree to the reference, and even in that case the assent of the Commissioners thereto is necessary. As in the previous section, it is to be assumed the Board of Trade, under Part VI. of the "Regulation of Railways Act, 1868," in differences in cases in which a railway company is *one of the parties*, would refer such to the Commissioners.

Transfer to Commissioners of certain powers and duties of the Board of Trade.
26 & 27 Vict. c. 92.

"10. *The following powers and duties of the Board of Trade shall be transferred to the Commissioners; namely,*

"(1.) *The powers of the Board of Trade under Part III. of the Railway Clauses Act, 1863, or under any special Act, with respect to the approval of working agreements between railway companies; and,*

"(2.) *The powers and duties of the Board of Trade under section thirty-five of the Railway Clauses Act, 1863, with respect to the exercise by railway companies of their powers in relation to steam vessels:*

And the provisions of the said Acts conferring such powers or imposing such duties, or otherwise referring to such powers or duties, shall, so far as is consistent with the tenor thereof, be read as if the Commissioners were therein named instead of the Board of Trade."

Form of application under sub-sec. 1.

An application made to the Commissioners under sub-section 1 of this section, is for the approval by the Commissioners of any working agreement between railway companies of which they desire to have the Commissioners' approval, or is for the exercise of any powers (to be specified in the application) transferred by the sub-section to the Commissioners, with respect to the approval of such working agreement. (*Order 6.*)

Railway Clauses Act, 1863, Part III.

Part III. of the "Railway Clauses Act, 1863" (26 & 27 Vict. c. 92),¹ refers to working agreements. Section 22 (the

¹ For Parts III. and IV. of this Act, *vide* Appendix.

first section in that part) enacts certain restrictions on agreements between companies, authorized to do so by a special Act, as to (1) the maintenance and management of the companies respectively, or any one or more of them, or any part, and of the works connected therewith or any of them; (2) the use and working of the railways or railway, or of any part thereof, and the conveyance of traffic thereon; (3) the fixing, collecting, and apportionment of the tolls, rates, charges, receipts and revenues levied, taken, or arising in respect of traffic.

Section 23 treats of the requisite sanction of the shareholders to agreements. Section 24 enacts that before the companies enter into the agreement, notice of their intention to do so shall be given by them or one of them in a form to be approved by the Board of Trade (*now, by the Commissioners*), inserted once at least in each of three successive weeks in some newspaper prescribed in the special Act, and if no county is prescribed then in the county or one of the counties in which each railway to the maintenance, &c., whereof the proposed agreement relates, or some portion of that railway is situate, and the notice shall set forth within what time and in what manner any company or person aggrieved by the proposed agreement, and desiring to object thereto, may bring the objection before the Board of Trade (*now, before the Commissioners*). Section 25 enacts that the agreement shall not have any operation until it is approved by the Board of Trade (*now, the Commissioners*); and the Board of Trade (*now, the Commissioners*) shall not approve of the agreement without being satisfied of its having received the sanction of meetings of the respective companies before mentioned.

The remaining sections of Part III. 26, 27, 28 and 29, treat respectively of (1) the joint committee for the purposes of agreements; (2) agreements between companies being modified by the Board of Trade (*now, by the Commissioners*); (3) working agreements between

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a company and an individual; and (4) alteration of an agreement.

Railway
Clauses Act,
1863, Part IV.

Part IV. of the "Railway Clauses Act, 1863," refers exclusively to steam vessels. The first section under it, viz. 30 of the Act, contains a provision for equality of treatment of persons travelling by steam vessels worked by railway companies. Section 31 extends the provisions of the "Railway and Canal Traffic Act, 1854," to steam vessels and to the traffic carried on thereby. Section 32 empowers the company to make bye-laws for regulating steam vessels. Sections 33 and 34 treat of the recovery of money by distress, and as to several names in one warrant. Section 35, more particularly referred to in section 10 of this Act, enacts that in every seventh year after the passing of the special Act, reckoned from the first day of January next after its passing, the Board of Trade (*now, the Commissioners*), if they are of opinion that the interests of the public are prejudicially affected by the exercise of the powers of the company relative to steam vessels, may give to the company notice in writing thereof, and of the reasons on which that opinion is founded; and if the company does not before the beginning of the then next Session of Parliament, make provision to the satisfaction of the Board of Trade (*now, the Commissioners*) for protection of the interests of the public, or if the injury done to the interests of the public is in the opinion of the Board of Trade (*now, the Commissioners*) incapable of being remedied by the company, then the Board of Trade (*now, the Commissioners*), at the beginning of the Session of Parliament the next following, shall report to both Houses of Parliament such their opinion, and the reasons on which that opinion is founded; and at the expiration of twelve calendar months after the presentation to the Houses of Parliament of that report, the powers of the company relative to steam vessels, or such of them as are specified in the report, shall, unless Parliament in the meantime otherwise provides, cease to be exercised.

Explanation and Amendment of Law.

“ 11. *Whereas by section two of the Railway and Canal Traffic Act, 1854, it is enacted that every railway company and canal company and railway and canal company shall, according to their respective powers, afford all reasonable facilities for the receiving and forwarding and delivering of traffic upon and from the several railways and canals belonging to or worked by such companies respectively, and for the return of carriages, trucks, boats, and other vehicles; and that no such company shall make or give any undue or unreasonable preference or advantage to or in favour of any particular person or company, or any particular description of traffic, in any respect whatsoever, or shall subject any particular person or company, or any particular description of traffic, to any undue or unreasonable prejudice or disadvantage in any respect whatsoever; and that every railway company and canal company and railway and canal company having or working railways or canals which form part of a continuous line of railway, or canal or railway and canal communication, or which have the terminus station or wharf of the one near the terminus station or wharf of the other, shall afford all due and reasonable facilities for receiving and forwarding by one of such railways or canals all the traffic arriving by the other, without any unreasonable delay, and without any such preference or advantage or prejudice or disadvantage as aforesaid, and so that no obstruction may be offered to the public desirous of using such railways or canals or railways and canals as a continuous line of communication, and so that all reasonable accommodation may by means of the railways and canals of the several companies be at all times afforded to the public in that behalf:*

“ And whereas it is expedient to explain and amend the said enactment: Be it therefore enacted, that—

“ Subject as hereinafter mentioned, the said facilities to be so afforded are hereby declared to and shall include the

Explanation
of 17 & 18
Vict. c. 31,
s. 2, as to
through traffic.

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due and reasonable receiving, forwarding, and delivering by every railway company and canal company, and railway and canal company, at the request of any other such company, of through traffic to and from the railway or canal of any other such company at through rates, tolls, or fares (in this Act referred to as through rates).

“ Provided as follows :

“ (1.) The company requiring the traffic to be forwarded shall give written notice of the proposed through rate to each forwarding company, stating both its amount and its apportionment, and the route by which the traffic is proposed to be forwarded :

“ (2.) Each forwarding company shall, within the prescribed period after the receipt of such notice, by written notice inform the company requiring the traffic to be forwarded whether they agree to the rate and route ; and, if they object to either, the grounds of the objection :

“ (3.) If at the expiration of the prescribed period no such objection has been sent by any forwarding company, the rate shall come into operation at such expiration :

“ (4.) If an objection to the rate or route has been sent within the prescribed period, the matter shall be referred to the Commissioners for their decision :

“ (5.) If an objection be made to the granting of the rate or to the route, the Commissioners shall consider whether the granting of the rate is a due and reasonable facility in the interest of the public, and whether, having regard to the circumstances, the route proposed is a reasonable route, and shall allow or refuse the rate accordingly :

“ (6.) If the objection be only to the apportionment of the rate, the rate shall come into operation at the expiration of the prescribed period, but the decision of the Commissioners as to its apportionment shall be retrospective ; in any other case the operation of the rate shall be suspended until the decision is given :

“ (7.) The Commissioners in apportioning the through rate shall take into consideration all the circumstances of

the case, including any special expense incurred in respect of the construction, maintenance, or working of the route, or any part of the route, as well as any special charges which any company may have been entitled to make in respect thereof :

“ (8.) It shall not be lawful for the Commissioners in any case to compel any company to accept lower mileage rates than the mileage rates which such company may for the time being legally be charging for like traffic carried by a like mode of transit on any other line of communication between the same points, being the points of departure and arrival of the through route :

“ (9.) The prescribed period mentioned in this section shall be ten days, or such longer period as the Commissioners may from time to time by general order prescribe.

“ Where a railway company or canal company use, maintain or work, or are party to an arrangement for using, maintaining, or working, steam vessels for the purpose of carrying on a communication between any towns or ports, the provisions of this section shall extend to such steam vessels, and to the traffic carried thereby.”

An application made to the Commissioners under sub-section 4 of this section is for a summons calling upon the forwarding company to show cause why the through rate or route, or through rate and route proposed by the applicant and objected to by the forwarding company, should not be allowed by the Commissioners. (*Order 7.*)

Form of application under sub-sec. 4.

An application under sub-section 6 is for a summons calling upon the forwarding company to show cause why the apportionment of the through rate proposed by the applicant and objected to by the forwarding company should not be allowed by the Commissioners. (*Order 8.*)

By this section, which enlarges the enactments of section 2 of the Act of 1854, the Commissioners have powers with regard to through rates which are distinctly

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stated. Section 16 of the Regulation of Railways Act, 1868, with regard to steam vessels, has, as previously stated, been by Section 6 incorporated with the present Act, and the latter clause of this section is practically a repetition of Section 16 of the Act of 1868.

The decisions as to undue preference, reasonable facilities, &c., will be found in Part II.

Powers of
Commissioners as to
through rates.

"12. Subject to the provisions in the last preceding section contained, the Commissioners shall have full power to decide that any proposed through rate is due and reasonable, notwithstanding that a less amount may be allotted to any forwarding company out of such through rate than the maximum rate such company is entitled to charge, and to allow and apportion such through rate accordingly."

Provisions for
complaints
by public
authority in
certain cases.

"13. A complaint of a contravention of section two of the Railway and Canal Traffic Act, 1854, as amended by this Act, may be made to the Commissioners by a municipal or other public corporation, local or harbour board, without proof that the complainants are aggrieved by the contravention: Provided that a complaint shall not be entertained by the Commissioners in pursuance of this section unless such complaint is accompanied by a certificate of the Board of Trade to the effect that in their opinion the case in respect of which the complaint is made is a proper one to be submitted for adjudication to the Commissioners by such municipal or other public corporation, local or harbour board."

Applications
under seal.

As previously stated, applications by a municipal or other public corporation, local or harbour board, must be sealed with their seal and signed by their secretary or other officer acquainted with the facts stated in the application.

While the section states that such an application may be made to the Commissioners without proof that the complainants are aggrieved by the contravention of

Section 2 of the Act of 1854, as amended by this Act, yet, where they are not so aggrieved, that the application is at least one for the public good must be shown to the satisfaction of the Board of Trade.

By 35 & 36 Vict. c. 91, known as Mr. Leeman's Act (which does not extend to Ireland or the City of London), power *inter alia* is conferred on a governing body, which means the Council of any municipal borough, the Board of Health, Local Board Commissioners, trustees or other body acting under any general or local Act of Parliament for the management, improvement, cleansing, paving, lighting, and otherwise governing places or districts, to prosecute or defend any legal proceedings necessary for the promotion or protection of the interests of the inhabitants of the district, and to apply the borough fund, borough rate, or other public funds or rates under the control of such governing body, to the payment of the costs and expenses attending the same.

Mr. Leeman's
Act.

"14. *Every railway company and canal company shall keep at each of their stations and wharves a book or books showing every rate for the time being charged for the carriage of traffic, other than passengers and their luggage, from that station or wharf to any place to which they book, including any rates charged under any special contract, and stating the distance from that station or wharf of every station, wharf, siding, or place to which any such rate is charged.*

Publication
of rates.

"Every such book shall during all reasonable hours be open to the inspection of any person without the payment of any fee.

"The Commissioners may from time to time, on the application of any person interested, make orders with respect to any particular description of traffic, requiring a railway company or canal company to distinguish in such book how much of each rate is for the conveyance of the traffic on the railway or canal, including therein tolls for

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the use of the railway or canal, for the use of carriages or vessels, or for locomotive power, and how much is for other expenses, specifying the nature and detail of such other expenses.

“Any company failing to comply with the provisions of this section shall for each offence, and in the case of a continuing offence, for every day during which the offence continues, be liable to a penalty not exceeding five pounds, and such penalty shall be recovered and applied in the same manner as penalties imposed by the Railways Clauses Consolidation Act, 1845, and the Railways Clauses Consolidation (Scotland) Act, 1845 (as the case may require), are for the time being recoverable and applicable.”

Form of
application.

An application made to the Commissioners under this section is for a summons calling upon the railway company or canal company, against whom the application is made, to show cause why they should not distinguish in the book or books therein mentioned how much of the rate in respect whereof the application is made, is for the conveyance of the particular description of traffic therein named on the railway or canal in question, including therein tolls for the use of the railway or canal, for use of carriages or vessels, or for locomotive or other tractive power, and how much is for other expenses, specifying the nature and detail of such other expenses. The applicant in such case must state that he is interested in the matter, and show how he is interested therein. (Order 9.)

It is for the Commissioners on the railway or canal company complying with their orders as specified in this section, to decide whether or not any inequality of rates constitutes an undue preference. In certain cases quoted in chapter 3 of Part II. inequality has been held justifiable.

Penalties
under sec. 14.

The “Railways Clauses Consolidation Act, 1845,” is 8 Vict. c. 16. The sections having reference to the

penalties imposed by the Act are 142 to 162. The "Railways Clauses Consolidation (Scotland) Act, 1845," is 8 Vict. c. 17, and the sections therein having reference to the penalties are 144 to 146.

"15. *The Commissioners shall have power to hear and determine any question or dispute which may arise with respect to the terminal charges of any railway company, where such charges have not been fixed by any Act of Parliament, and to decide what is a reasonable sum to be paid to any company for loading and unloading, covering collection, delivery, and other services of a like nature; any decision of the Commissioners under this section shall be binding on all courts and in all legal proceedings whatsoever.*"

Power to Commissioners to fix terminal charges.

An application made to the Commissioners under this section is for a summons calling upon the railway company against whom the application is made to show cause why the question or dispute therein mentioned with respect to the terminal charge of such company (the charges not having been fixed by any Act of Parliament) should not be heard and determined by the Commissioners, and why they should not decide what is a reasonable sum to be paid to such company for loading and unloading, covering collection, delivery, and other services of a like nature. The applicant must state the actual amount of such charges, and the amount which he contends that they ought to be. (*Order 10.*)

Form of application.

For the law with respect to terminal charges, see Part II.

"16. *No railway company or canal company, unless expressly authorized thereto by any Act passed before the passing of this Act, shall, without the sanction of the Commissioners, to be signified in such manner as they may by general order or otherwise direct, enter into any agreement whereby any control over or right to interfere in or concerning the traffic carried or rates or tolls levied on any part of*

Arrangements between railway companies and canal companies.

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a canal is given to a railway company, or any persons managing or connected with the management of any railway; and any such agreement made after the commencement of this Act without such sanction shall be void.

“ The Commissioners shall withhold their sanction from any such agreement which is in their opinion prejudicial to the interests of the public.

“ Not less than one month before any such agreement is so sanctioned, copies of the intended agreement certified under the hand of the secretary of the railway company or one of the railway companies party or parties thereto, shall be deposited for public inspection at the office of the Commissioners, and also at the office of the clerk of the peace of the county, riding, or division in England or Ireland in which the head office of any canal company party to the agreement is situate, and at the office of the principal sheriff-clerk of every such county in Scotland; and notice of the intended agreement, setting forth the parties between whom or on whose behalf the same is intended to be made, and such further particulars with respect thereto as the Commissioners may require, shall be given by advertisement in the London, Edinburgh, or Dublin Gazette, according as the head office of any canal company party to the agreement is situate in England, Scotland, or Ireland, and shall be sent to the secretary or principal officer of every canal company any of whose canals communicates with the canal of any company party to the agreement; and shall be published in such other way, if any, as the Commissioners for the purpose of giving notice to all parties interested therein by order direct.”

Form of
application.

An application made to the Commissioners under this section is for them to sanction the agreement therein mentioned, such sanction to be signified by certificate under their seal. (Order 11.)

The principal Canal Acts are in the Appendix.

Maintenance

“ 17. Every railway company owning or having the

management of any canal, or part of a canal, shall at all times keep and maintain such canal or part, and all the reservoirs, works, and conveniences thereto belonging, thoroughly repaired and dredged and in good working condition, and shall preserve the supplies of water to the same, so that the whole of such canal, or part, may be at all times kept open and navigable for the use of all persons desirous to use and navigate the same without any unnecessary hindrance, interruption, or delay."

of canals by
railway
companies.

An application made to the Commissioners under this section is for a summons calling upon the railway company against whom the application is made to show cause why a writ of injunction should not issue against them, restraining them from permitting and suffering the canal therein mentioned, or parts thereof, or works belonging thereto, to remain unrepaired, or in want of dredging, or not in good working condition, or without proper supplies of water thereto; and also enjoining them to keep and maintain the said canal or such parts thereof, or such works thereto belonging, thoroughly repaired or dredged, or in good working condition, or to preserve the supplies of water to the same. The application in such case must specify the obstruction, non-repair, or other defect sought to be remedied, and show in what part of the canal or works such obstruction, non-repair, or other defect exists. (Order 12.)

Form of
application.

Conveyance of Mails.

"18. Every railway company shall convey by any train all such mails as may be tendered for conveyance by such train, whether such mails be under the charge of a guard appointed by the Postmaster General or not, and notwithstanding that no notice in writing requiring mails to be conveyed by such train has been given to the company by the Postmaster General.

Conveyance
of mails.

"Every railway company shall afford all reasonable

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facilities for the receipt and delivery of mails at any of their stations without requiring them to be booked or interposing any other delay.

"Where the mails are in charge of a guard appointed by the Postmaster General, every railway company shall permit such guard, if he think fit, to receive and deliver them at any station by himself or his assistants, rendering him nevertheless such aid as he may require."

Statutes as to conveyance of mails.

The statutes having reference to obligations on railway companies with respect to the conveyance of mails are, 1 & 2 Vict. c. 98; 7 & 8 Vict. c. 85, s. 11, and 10 & 11 Vict. c. 85, s. 16, for which see Appendix. By a clause inserted in each special Railway Act, the company is made liable to the provisions of the above General Acts.

Remuneration for conveyance of mails.

"19. Every railway company shall be entitled to reasonable remuneration for any services performed by them in pursuance of this Act with respect to the conveyance of mails, and such remuneration shall be paid by the Postmaster General.

"Any difference between the Postmaster General and any railway company as to the amount of such remuneration, or as to any other question arising under this Act, shall be decided by arbitration, in manner provided by the Act of the Session of the first and second years of the reign of her present Majesty, chapter 98, or at the option of such railway company, by the Commissioners."

Commissioners may act separately.

The Commissioners may exercise their jurisdiction by any one or two of their number in cases under this section. (Order 53.)

Arbitration under 1 & 2 Vict. c. 98.

Settlement by arbitration of any difference between the Postmaster General and any railway company is enacted by the 16th, 17th, and 18th sections of 1 & 2 Vict. c. 98. For the statute see Appendix. The first-named section provides for the appointment of two

persons, one by the Postmaster General, and the other by the company; and if these two persons cannot agree on the amount of remuneration or compensation, then to the umpirage of some third person to be appointed previously to entering upon the inquiry. The succeeding section provides that companies after contracts have existed for a certain period may refer them to arbitrators to decide as to their continuance. It also provides that the services performed by the railway company for the Post-office should in nowise be interrupted or impeded thereby. The 18th section enacts that in all references the Postmaster General or the company, as the case might be, should nominate his or their arbitrator within fourteen days after notice from the other party; or, in default, it should be lawful for the arbitrator appointed by the party giving notice to name the other arbitrator, and such arbitrators should proceed forthwith in the reference, and make their award within twenty-eight days after their appointment, or otherwise the matter should be left to be decided by the umpire, and if the umpire should refuse or neglect to proceed and make award for the space of twenty-eight days after the matter should have been referred to him, then a new umpire should be appointed by the two first-named arbitrators, who should in like manner proceed and make his award within twenty-eight days, or in default be superseded, and so *toties quoties*.

“20. *Where a railway company use, maintain, or work, or are party to any arrangement for using, maintaining, or working steam vessels, for the purpose of carrying on a communication between any towns or ports, all provisions contained in any Act with respect to the conveyance of mails by railways, shall, so far as they are applicable to the conveyance of mails by steam vessels, extend to the steam vessels so used, maintained, or worked.*”

Conveyance
of mails on
steam vessels.

The “Regulation of Railways Act, 1868,” extended the provisions of the Act of 1854 to passengers travelling by

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steam-vessels used by railway companies. The eleventh section of the present Act further extends the Act of 1854 to traffic generally on steam vessels used by railway companies; and this twentieth section, by including the conveyance of mails by steam vessels so used, puts steam vessels in the same category with railway trains.

Regulations as to Commissioners.

Assistant-Commissioners.

“21. *The Assistant-Commissioners shall be subject to the orders of the Commissioners, and shall make such inquiries and reports and perform such other acts and services as the Commissioners may direct; and it shall be lawful for such Assistant-Commissioners, or either of them, to undertake such arbitration under the Act as the Commissioners, with the consent of the parties to such arbitration, may direct; and the said Assistant-Commissioners, for the purposes of such inquiries, reports, and arbitrations, shall have and may exercise all powers of entry, inspection, summoning and examining witnesses, requiring the production of documents, and administering an oath by this Act conferred upon the Commissioners.*”

No Assistant-Commissioner has as yet been appointed under the Act. As to depositions and evidence before an Assistant-Commissioner, see General Orders 35 and 36.

Salary of Commissioners.

“22. *There shall be paid to each of the Commissioners such salary, not exceeding three thousand pounds a year, and to each Assistant-Commissioner such salary not exceeding fifteen hundred pounds a year, as the Treasury determine.*

“*The salaries and expenses of the Commissioners, and of their officers, and of the Assistant-Commissioners, shall be paid out of moneys to be provided by Parliament.*

Assessors.

“23. *The Commissioners may, from time to time, in the exercise of any jurisdiction in this Act conferred on them, with the consent of the Treasury, call in the aid of one or*

more assessors, who shall be persons of engineering or other technical knowledge. There shall be paid to such assessors such remuneration as the Treasury, upon the recommendation of the Commissioners, may direct."

This section changes part of the 3rd section of the Act of 1854, and is adapted to the altered jurisdiction of the Commissioners. Formerly the Court of Common Pleas in England and the Courts of Ireland and Scotland could direct and prosecute inquiries by engineers, barristers, or other persons, as they should think proper, who, if directed to do so, might receive evidence on oath, and administer such oath. Now the Commissioners can call in the aid of persons of engineering or other technical knowledge merely as assessors.

"24. The Commissioners may from time to time appoint such officers and clerks with such salaries as the Commissioners, with the sanction of the Treasury, think fit."

Appointment of officers.

The principal officer of the Commissioners is the Registrar. His office is open from ten o'clock in the forenoon till five o'clock in the afternoon daily, except between the 10th day of August and the 1st day of October, in any year after the year 1873, when it is to be open from eleven in the forenoon till two in the afternoon, and except on Good Friday, Easter Eve, Monday and Tuesday in Easter week, Christmas day, and the three following days—the Queen's Birthday, and Whit Monday, and Whit Tuesday, when the office is closed. (*Order 49.*)

The Registrar's office, when open.

"25. For the purposes of this Act the Commissioners shall, subject as in this Act mentioned, have full power to decide all questions whether of law or of fact, and shall also have the following powers; that is to say:

Powers of Commissioners.

"(a.) They may, by themselves or by any person appointed by them to prosecute an inquiry, enter and inspect

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any place or building being the property or under the control of any railway or canal company, the entry or inspection of which appears to them requisite;

"(b.) They may require the attendance of all such persons as they think fit to call before them and examine, and may require answers or returns to such inquiries as they think fit to make;

"(c.) They may require the production of all books, papers, and documents relating to the matters before them;

"(d.) They may administer an oath;

"(e.) They may when sitting in open court punish for contempt in like manner as if they were a court of record.

"Every person required by the Commissioners to attend as a witness shall be allowed such expenses as would be allowed to a witness attending on a subpoena before a court of record; and in case of dispute as to the amount to be allowed, the same shall be referred to a master of one of the superior courts, who, on request, under the hands of the Commissioners, shall ascertain and certify the proper amount of such expenses."

Inquiries
under this
Act and the
Act of 1854.

If the Commissioners at any stage of the proceedings think fit to direct inquiries to be made under this section they give notice thereof to the parties to the application, and may stay proceedings or any part of the proceedings thereon until further notice from the Commissioners. (Order 16.) For warrant of commitment for contempt, see Appendix.

Taxation of
costs.

By the 36th section in the application of the Act to Scotland the term "attending on subpoena before a court of record" means attending on citation the Court of Justiciary, and the Queen's and Lord Treasurer's Remembrancer is to perform the duties of a master of one of the superior courts under the Act. It is a question whether the duties of a taxing master in Scotland under the Act are intended to be performed by this officer. On reference to the 34th section, *post*, costs are to be

“taxed in the same manner and by the same person as if such proceedings were proceedings in a superior court.” The last interpretation clause at the commencement of the Act states that the term “superior court” means in Scotland “the Court of Session.” The auditor of that Court is its taxing officer, from which it may be fairly assumed that he will in Scotland tax any costs or expenses under the Act.

“26. Any decision or any order made by the Commissioners for the purpose of carrying into effect any of the provisions of this Act may be made a rule or order of any superior court, and shall be enforced either in the manner directed by section 3 of the Railway and Canal Traffic Act, 1854, as to the writs and orders therein mentioned, or in like manner as any rule or order of such court.”

Orders of
Commis-
sioners.

“For the purpose of carrying into effect this section, general rules and orders may be made by any superior court in the same manner as general rules and orders may be made with respect to any other proceedings in such court.

“The Commissioners may review and rescind or vary any decision or order previously made by them or any of them.

“The Commissioners shall, in all proceedings before them under sections 6, 11, 12, and 13 of this Act, and may, if they think fit, in all other proceedings before them under this Act, at the instance of any party to the proceedings before them, and upon such security being given by the appellant as the Commissioners may direct, state a case in writing for the opinion of any superior court determined by the Commissioners upon any question which in the opinion of the Commissioners is a question of law.

“The court to which the case is transmitted shall hear and determine the question or questions of law arising thereon, and shall thereupon reverse, affirm, or amend the determination in respect of which the case has been stated,

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or remit the matter to the Commissioners with the opinion of the court thereon, or may make such other order in relation to the matter, and may make such order as to costs, as to the court may seem fit, and all such orders shall be final and conclusive on all parties: provided that the Commissioners shall not be liable to any costs in respect or by reason of any such appeal.

"The operation of any decision or order made by the Commissioners shall not be stayed pending the decision of any such appeal, unless the Commissioners shall otherwise order.

"Save as aforesaid, every decision and order of the Commissioners shall be final."

Appeal to a
superior court.

If either party desire to appeal to a superior court from the decision of the Commissioners upon any question which in the opinion of the Commissioners is a question of law, he must give notice to the other party and to the Registrar within fourteen days from the time when the decision was communicated to the parties, and therein state what the question of law is, and express his intention to apply to the Commissioners on a certain day to be therein named (not exceeding fourteen days from the date of the notice), to state a case in writing for the opinion of a superior court, to be determined by the Commissioners upon such security being given as they may direct. (*Order 42.*)

Appeal to all
the Commis-
sioners from
one or two of
them.

If either party desire a re-hearing by all the Commissioners of any decision or order made by any one or two of their number, he must give notice to the other party and to the Registrar within fourteen days from the time when the decision or order was communicated to the parties, and therein express his desire to have the same re-heard, wholly or in part, and his intention to apply to the Commissioners on a certain day to be therein named (not exceeding fourteen days from the date of the notice), to re-hear the same, specifying the

question upon which he requires such re-hearing. (Order 43.)

An application to the Commissioners to review and rescind or vary any decision or order previously made by them must be made within twenty-eight days after the decision or order shall have been communicated to the parties, unless the Commissioners think fit to enlarge the time for making such application. (Order 41.)

Alteration or rescinding of orders.

The superior courts mentioned in this section mean in England and Ireland any of Her Majesty's superior courts at Westminster and Dublin respectively, and in Scotland the Court of Session.

"27. *The Commissioners shall sit at such times and in such places, and conduct their proceedings in such manner as may seem to them most convenient for the speedy despatch of business; they may, subject as in this Act mentioned, sit either together or separately, and either in private or in open court; but any complaint made to them shall, on the application of any party to the complaint, be heard and determined in open court.*"

Sittings of Commissioners.

See General Order 53. (Appendix.)

"28. *The costs of and incidental to any proceeding before the Commissioners shall be in the discretion of the Commissioners.*"

Costs.

Costs are taxed upon the order of the Commissioners by which they are payable, and when taxed may be recovered by making such order a rule of any superior court in the ordinary way and issuing execution upon such rule, or may be recovered in any other manner according to the practice of the said court. (Order 40.)

How taxed and recovered.

The latter portion of this order evidently refers to the practice of the Court of Session in Scotland, which differs from that of England and Ireland in the matter of rules of court. By the practice of the Court of Session an

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ordinary action to enforce payment of costs granted by the Commissioners is necessary, unless in the case of a submission to the Commissioners, when both parties consent to the award by the Commissioners being registered in the books of council and session for execution, which would be equivalent to a rule of Court in England.

Several cases with respect to costs will be found in Part II.

Power of Commissioners to make general orders.

"29. The Commissioners may at any time after the passing of this Act and from time to time make such general orders as may be requisite for the regulation of proceedings before them, including applications for and the stating of cases for appeal, and also for prescribing, directing, or regulating any matter which they are authorized by this Act to prescribe, direct, or regulate by general order, and also for enabling the Commissioners in cases to be specified in such general orders to exercise their jurisdiction by any one or two of their number; provided, that any person aggrieved by any decision or order made in any case so specified may require a re-hearing by all the Commissioners; they may further make regulations for enabling them to carry into effect the provisions of this Act, and may from time to time revoke and alter any general orders or regulations made in pursuance of this Act. Every general order, and every alteration in a general order, made in pursuance of this section shall be submitted to the Lord Chancellor for approval, and shall not come into force until it shall be approved by him.

"Every general order purporting to be made in pursuance of this Act, shall, immediately after the making thereof, be laid before both Houses of Parliament, if Parliament be then sitting, or if Parliament be not then sitting, within seven days after the then next meeting of Parliament, and if either House of Parliament by a resolution passed within two months after such general order has been so laid before

the said House, resolve that the whole or any part of such general order ought not to continue in force, the same shall after the date of such resolution cease to be of any force, without prejudice nevertheless to the making of any other general order in its place, or to anything done in pursuance of such general order before the date of such resolution; but, subject as aforesaid, every general order purporting to be made in pursuance of this Act shall be deemed to have been duly made and within the powers of this Act, and shall have effect as if it had been enacted in this Act."

By this section the general orders made by the Commissioners can be revoked or altered in manner therein provided. The orders remain in force unless so altered or revoked, or if either House of Parliament, by a resolution passed within two months after every general order has been laid before the House, resolve that the whole or part of such general order ought not to continue in force.

In the construction of the orders and the forms therein referred to, words importing the singular number include the plural, and words importing the plural number include the singular number, and the following terms (if not inconsistent with the context or subject matter) have the respective meanings hereinafter assigned to them, that is to say: "application" includes complaint under the Act, "applicant" includes any complainant under the Act, and "defendants" mean the persons or company against whom the application or complaint is made. (Order 1.)

Interpretation
of orders.

"30. Every document purporting to be signed by the Commissioners, or any one of them, shall be received in evidence without proof of such signature, and until the contrary is proved shall be deemed to have been so signed and to have been duly executed or issued by the Commissioners.

Evidence of
documents.

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Commissioners to make annual reports.

“31. *The Commissioners shall, once in every year, make a report to Her Majesty of their proceedings under this Act during the past year, and such report shall be laid before both Houses of Parliament within fourteen days after the making thereof if Parliament is then sitting, and if not, then within fourteen days after the next meeting of Parliament.*”

Miscellaneous.

Determination of fees.

“32. *The Commissioners may, at any time after the passing of this Act, by general order, with the concurrence of the Treasury, appoint the fees to be taken in relation to proceedings before them, and may from time to time, by general order, with the like concurrence, increase, reduce, or abolish all or any of such fees, and appoint new fees to be taken in relation to such proceedings.*”

For the table of fees issued by the Commissioners, see Appendix.

Collection of fees. 29 & 30 Vict. c. 76.

“33. *The Public Offices Fees Act, 1866, shall apply to all fees taken in relation to any proceedings before the Commissioners.*

“*Any fee or payment in the nature or lieu of a fee paid in respect of any proceedings before the Commissioners and collected otherwise than by means of stamps shall be paid into the receipt of Her Majesty's Exchequer in such manner as the Treasury from time to time direct, and carried to the Consolidated Fund.*”

The Lords Commissioners of Her Majesty's Treasury, in pursuance of the “Public Offices Fees Act, 1866,” have issued a notice with respect to the stamps, for which see Appendix.

Taxation of costs.

“34. *The costs, charges, and expenses of and incidental to any proceedings before the Commissioners which are incurred by any person shall, if required, be taxed in the*

same manner and by the same persons as if such proceedings were proceedings in a superior court."

In England and Ireland the costs are taxed by the usual taxing master, and in Scotland by the auditor of the Court of Session. See remarks on section 25, *ante*, p. 36.

"35. Any notice required or authorized to be given under this Act may be in writing or in print, or partly in writing and partly in print, and may be sent by post, and if sent by post shall be deemed to have been received at the time when the letter containing the same would have been delivered in the ordinary course of the post; and in proving such sending it shall be sufficient to prove that the letter containing the notice was prepaid and properly addressed and put into a post office.

Notices how
to be given.

"36. In the application of this Act to Scotland—

Application
of Act to
Scotland.

"(1.) The term 'attending on subpoena before a Court of Record' means attending on citation the Court of Justiciary:

"(2.) The Queen's and Lord Treasurer's Remembrancer shall perform the duties of a master of one of the superior courts under this Act."

See remarks on section 25, *ante*, p. 36.

Temporary Provisions.

"37. This Act shall continue in force for five years next after the passing of this Act, and thenceforth until the end of the then next Session of Parliament; but the expiration of this Act shall not affect the validity of anything done before such expiration."

Duration of
office and
powers of
Commis-
sioners.

The Act passed on 31st July, 1873.

PART II.

CHAPTER I.

APPLICATION AND EXTENT OF "RAILWAY AND CANAL TRAFFIC ACT, 1854."

Jurisdiction
of Court of
Chancery or
Att.-Gen. not
abolished.

THE Act of 1854, though it gave powers to courts of common law, did not by giving concurrent jurisdiction abolish or abridge the jurisdiction of the Court of Chancery or the power of the Attorney-General. (*Att.-Gen. and Great Northern Railway Company*, 1 Drew & S. 154; *Baxendale and West Midland Railway Company*, 3 Griff. 650, affirmed on appeal, 7 L. T. N. S. 279, C.)

Design of Act.

The Act was designed to afford a remedy against an undue preference or undue prejudice to a particular individual or class in respect of the traffic on a railway or canal, and was not intended to apply to the case of a breach or neglect by a company of a public duty which was already susceptible of redress by mandamus or indictment. (*Bennett and Manchester, Sheffield and Lincolnshire Railway Company*, 6 C. B. N. S. 707.) In this case the company were the proprietors of the Grimsby Old Docks, also of another dock called the Grimsby New Dock, communicating with their railway. By Act of Parliament the company were authorized and required to maintain the old dock and the approach thereto of a given depth. It was held that the failure to perform this duty, so that the dock and its approach became silted up, and the depth of water therein insufficient for vessels to get to the wharfs adjoining, was not the subject of redress under the Act, although it was suggested that the object of the company was to discourage

the traffic to the old dock, and to divert it to the new one.

In commenting on the Act in *Attorney-General v. Great Northern Railway*, 29 L. J. Ch. 801, which was a suit to restrain the company from dealing in coal, Kindersley, V.-C., observed :—

“ It is said that there is another Act of Parliament which bears on the question, namely, the Act of 17 & 18 Vict. c. 31, and sections 2, 3, and 6, have been referred to. It is said that under this Act there is another remedy given by application to the Court of Common Pleas, and that is the course which ought to be taken. Now upon reading that Act of Parliament, it appears to me that it applies to cases of a totally different character and nature from that which is now before the Court. This Act of Parliament was meant to provide for a case of this sort. It may be that a railway company or a canal company to which it applies as well as to a railway company acting as carriers, may favour some individuals to the detriment of others, and so give preference to dealers in a particular article. The object of this Act was to prevent that. Now it is clear that the grievance which this Act was intended to prevent was, when a certain individual was suffering detriment by reason of the company not acting impartially between that individual and some other person; or it might happen between two companies. But it must be a case of private mischief, arising from partiality on the part of the railway with respect to the carriage of the goods of those individuals. It does not apply to the case where the public (that is, the Attorney-General on the part of the public) is complaining, not that you are carrying A.'s goods in preference to B.'s goods, but that there is a general detriment, not to any particular individual—not even to coal owners in particular—but a detriment to the public, who are the consumers of the coal. That is the complaint; and this Act does not appear to touch that question in the smallest degree. I may observe that with regard to this Act, the third section says that if any person is aggrieved by any such act of a railway, he may apply to the Court of Common Pleas, which Court is authorized to give a remedy in the shape of an injunction. Then comes the sixth clause, which prescribes this :—‘ That nothing herein contained shall take away or diminish any rights, remedies or privileges of any person or company against any railway or canal, or railway and canal company under the existing law.’ So that here, although they are prescribing a particular remedy for the benefit of individuals, it is expressly said :—‘ We do not mean to disturb your existing rights, whatever they are, but we are giving you this as an additional benefit.’ It is sufficient to

Judgment of
Kindersley,
V.-C.

say that the Act of Parliament appears to me to be addressed to a subject totally different from that which is now under consideration."

Proceedings
by public cor-
porations
under 13th s.
Act of 1873.

The 13th section of the present Act extends the provision for complaints which can now be made to the Commissioners by a municipal or other public corporation, local or harbour board without proof that the complainants are aggrieved by the contravention. The complaint cannot be entertained without a certificate from the Board of Trade as stated in the section.

Complaints
must be
specific.

Complaints against railway companies must be specific: for instance, a rule merely calling on them to show cause why they should not act in compliance with the statute was held too vague. (*Marriot In re London and South Western Railway*, 3 Jur. N. S. 493; 26 L. J. C. P. 154.)

Complaints
must be
presented to
company before
application
to Court.

Before applying to the Court of Common Pleas for an injunction to a railway company the complainant was bound to make a full representation to the company of the grievance of which he sought redress, and in general it was only on the failure of such application that he was to come to the Court. (*Cooper v. London and South Western Railway Company*, 4 Jur. N. S. 762, C. P. See section 7 of the Act of 1873.)

S. 7, Act of
1873.

Attachment
against com-
pany acting
bonâ fide dis-
missed.

An attachment against a railway company for disobedience to a writ enjoining them to desist from giving an undue preference in respect of the carriage of coals from certain places to other places mentioned in the order was refused, the affidavits on the part of the company showing a *bonâ fide* endeavour to conform to the order of the Court, although it appeared that the reformed scale of charges still operated in some other respects injuriously to the interests of the complainants and advantageously to other parties. (*Ransom v. Eastern Counties Railway Company*, 4 C. B. N. S. 159; 4 Jur. N. S. 859.)

Running
through trains.
Public incon-

To justify the interference of the Court of Common Pleas to enforce the running of through trains by the

most direct route, it was not sufficient to show a case of individual grievance, but a case must be established of public inconvenience which could be reasonably overcome. Thus the Court refused to enforce the running of through trains on a continuous line of railway, under the second branch of section 2 of the Act, because it was not shown that public convenience required it. They would not interfere at the instance of an individual where there was a continuous line by which through tickets might be obtained, though by a somewhat longer route, as no additional cost or serious loss of time was thereby incurred and no substantial inconvenience thereby occasioned to the public, and it appeared that no complaints had been made of the existing accommodation. (Re *Barrett and Great Northern Railway Company*, and *Midland Railway Company*, 1 C.B. N. S. 423 ; 26 L. J. C. P. 83 ; s. c. 28 L. T. 254.)

venience
necessary to
justify inter-
ference.

CHAPTER II.

UNDUE PREFERENCE GENERALLY.

RAILWAY or canal companies are prohibited from giving persons or companies trafficking with them any undue advantage or unreasonable favour and from subjecting them to any unreasonable prejudice or unfair disadvantage. This rule also applies to the various descriptions of traffic.

Should railway and canal companies engage in any undertakings distinct from those of railway or canal companies, they are prohibited from giving undue preference to themselves in these capacities.

The application of these rules will now be considered.

To trader
over larger
mileage.

A company made an agreement with *A.* to carry for him coals during three years from Peterborough to various places on their line of railway at certain rates. *B.*, a coal merchant at Ipswich, sent coals (which had been brought to that port by sea) to various places on the same line of railway, and the company charged him a much larger sum per ton in proportion to the distance over which his coals were carried, than the company charged to *A.*, the professed object of the difference being to enable *A.* (whose coal came to Peterborough by railway) to compete in the coal trade of the district with *B.*, who had the advantage of having his coals brought to Ipswich by sea. This was held to give an undue preference to *A.* The same company made a scale of charges for the carriage of coals from Peterborough and Ipswich respectively to various places, the effect of which was to diminish the natural advantages which the Ipswich dealers possessed over those of Peterborough from their greater proximity to those places by an-

nihilating (in point of expense of carriage) in favour of the latter a certain portion of the distance between Peterborough and those places, and this was held an undue preference of the Peterborough dealers over those of Ipswich. (*Ransome v. Eastern Counties Railway Company*, 4 C. B. N. S. 135; 4 Jur. N. S. 284; 27 L. J. C. P. 166.)

A railway company cannot, with a view of introducing certain traffic in their district to another part of the country, make special arrangements for its carriage at a lower rate than their ordinary charge. (*Oxlade v. North-Eastern Railway Company*, 1 C. B. N. S. 454; 3 Jur. N. S. 637; 26 L. J. C. P. 129.) In this case the company, from a desire to introduce the northern coke into Staffordshire, made special arrangements with certain merchants for the carriage of coal and coke at a lower rate than their ordinary charge, there being nothing to show that the pecuniary interests of the company were affected. The lowering of the rate for this traffic was held to be giving it an undue preference.

In order to promote particular trade.

A railway company will not be permitted to charge a particular sum per ton for conveyance of goods, provided they are consigned to their own agents; and if consigned to any one else, to charge an additional amount. This was held ground for an injunction against a company possessed of a line from B. to C. and who advertised to convey goods from A. to C. (in conjunction with another company) at the rate of 5s. per ton, provided they were consigned to their own agents at those respective places, but if consigned through any one else they charged 2s. 6d. per ton more. A rule was made absolute with costs, although it prayed a writ enjoining the company to charge an equal rate for the carriage from A. to C., and the writ was granted as from B. to C. only. (*Baxendale v. North Devon Railway Company*, 3 C. B. N. S. 324.)

To particular agents.

Circumstances where costs granted.

By deprivation of natural advantages from proximity to line.

Every one has a right to the natural advantages which have been acquired by the proximity of his land, and a

railway company is not justified in depriving him of it by allowing to another not so favourably situated the expense which the latter has incurred in connecting his land with the railway, in a reduced charge at which they carry his goods on their railway. Further, if a railway company carry coals along their line from a colliery at a lower rate of charges than coals from other coal pits situate in the same locality, in consequence of a threat from the owner of the colliery to construct another railway by which the traffic would be diverted if the company did not consent to carry at such lower rate, is an undue preference by the railway company. (*Harris v. Cockermouth and Workington Railway Company*, 3 C.B. N. S. 693 ; 4 Jur. N. S. 239 ; 27 L. J. C. P. 162.) In giving judgment in this case, Cockburn, C. J., observed :

Judgment of
Cockburn,
C. J., on this
point.

" I quite agree that this Court has intimated, if not absolutely decided, that a company is entitled to take into consideration any circumstances either of a general or of a local and peculiar character in considering the rate of charge which they will impose upon any particular traffic. As, for instance, if a company were to lay down a rule, that if a certain large quantity of goods were brought to be conveyed they could charge less for the conveyance of that large quantity than they would for the conveyance of a less quantity, regard being had to the cost of working the particular line, that would be a very fair ground to justify them in making a distinction between the case of a person who sent a ton of goods at a time and a person who sent only a hundredweight. So also if a company were to make a distinction between terminal traffic and intermediate traffic, there might be very fair and sufficient reason for their so doing. As, for instance, in respect of terminal traffic, there might be competition with another railway; and in respect of terminal traffic as distinguished from intermediate traffic, it might well be they could afford to carry goods over the whole line cheaper, or proportionably so, than they could over an intermediate part of the line. But in all such cases the general public would be treated with perfect equality, although, as regards the charges between one place and another, there might be an apparent, though, for the reasons I have referred to, no real injustice. But those cases are very different from the present. Here there are collieries situate in the same locality, and a distinction is made between them upon the ground that L. or his tenants would send their coals by some other conveyance, either by

the ordinary mode or by some railway which L. would be induced to construct if the company did not give him this advantage over others who are competing with him in the sale of coals. In my opinion that is not a sufficient ground for making the distinction. Whatever rule the company may lay down, it ought to be a rule applicable to all persons similarly circumstanced. I do not think that this is such a rule. It is plain that if we were to take into consideration the circumstances on which counsel relied, there is no case in which we should not be called on to enter into a consideration of the various circumstances which may influence one person as distinguished from another in sending his goods by a particular railway. Circumstances differ in every individual case, and it might always be a question of how far the company would be justified in making particular bargains. I do not think it was the intention of the Legislature, or its policy when railways were constituted, that they should have the power of making bargains with particular individuals so as to give them advantages and subject others to corresponding disadvantages. The intention of the Legislature was, I think, to give equal advantages, so far as the rate of charge is concerned, to all individuals similarly circumstanced; and that a railway company, although they should have had a right to lay down certain rules in reference to particular circumstances, provided they act *bonâ fide* with regard to their own interests and the interests of the public, should not be at liberty to make particular bargains with particular individuals, whereby one person is benefited and another injured."

A preference given by a railway company to a customer who engaged to employ other lines of the company for traffic distinct from and unconnected with that in respect of which such preference was given, is an undue preference. (*Baxendale v. Great Western Railway Company*, 4 Jur. N. S. 1241; 5 C. B. N. S. 309; 28 L. J. C. P. 69.)

To persons employing other distinct lines of same company.

Between the same parties an undue preference was also held to exist as follows. The company formerly charged a uniform rate of 3*s.* 6*d.* per ton on all goods conveyed on their line between R. and P. The goods were collected and delivered both by the company and the complainants at a charge of 4*s.* 10*d.* per ton. The company, who had power under their Acts to impose their own rates of charge for carrying, but no power to impose tolls for collecting and delivering, raised the

Collecting and delivering goods free of charge.

charge for carrying to 8s. 4d., being the aggregate of the above two charges, with an intimation to the public that they would collect and deliver goods free from all charge. The real purpose of this arrangement was to compel persons desiring to have their goods conveyed by the railway, to employ the company to collect and deliver such goods, and thus to secure this business and the profits on it to the company, as well as to exclude the complainants from competing with them in this department of business. This arrangement was held to be an undue preference to the company in their separate capacity of carriers, other than on the line of railway, and also an undue prejudice to the complainants. (*Bazendale v. Great Western Railway Company*, 5 C. B. N. S. 336; 28 L. J. C. P. 81; 4 Jur. N. S. 1279.)

The judgment of the Court in this case was delivered by Cockburn, C. J., who said:—

Judgment of
Cockburn,
C. J.

“The main stand made by the counsel for the company was on the ground, first, that although the Legislature has imposed on railway companies the obligation of affording accommodation on equal terms to the public, it cannot have been the intention to deprive them of the right possessed by all trading companies, as well as by individuals, of using their property and managing their affairs within the scope of the purposes for which they are constituted in such manner as they think most to their advantage; and secondly, that in the present instance the company had by Act of Parliament the power of raising their tolls at their own will and pleasure, provided they raise them equally as against all persons; that here they have raised them equally against all, and that it was not within the authority of this Court to fix limits to the amount of accommodation which the company might think proper to afford gratuitously, beyond the conveyance by the railway for which the toll was charged. We think there is little difficulty in disposing of this argument. It is abundantly clear, from the statutory enactments which enjoin on railway companies the obligation to afford accommodation on equal and reasonable terms, and from the provisions of the statute by which jurisdiction is given to this Court against the affording of undue preference or the imposing of undue prejudice or disadvantage, that it was not the intention of the Legislature to leave to railway companies the unfettered exercise of their rights as proprietors of their respective lines; but in return for the great power which it has

conceded to them, and the monopoly of the carrying business of the country, which in a great degree they have been enabled to acquire, it has imposed upon them the obligation of affording accommodation on equal terms to the whole of the public. The policy and justice of such a requirement are manifest, it being obvious that the powers of a railway company and its monopoly, under the impossibility of all competition, might otherwise be converted into a means of very grievous oppression by a difference in point of charge or in point of accommodation made in favour of one man at the expense of another, or by disadvantages in respect either of charge or accommodation imposed on one as compared with another. And it is plain that the oppressive effects of such inequality will be equally great, whether its motive and operation be to benefit third parties or the railway company itself. Such being plainly the intention of the Legislature, and this Court having been constituted the tribunal by which any injustice or inequality of the working of the railway system as between the companies and the public is to be redressed, we must endeavour to prevent any injustice either in the rate of charge or the degree of accommodation afforded. At the same time we must carefully avoid interfering, except where absolutely necessary for the above purpose, with the ordinary rights which (subject to the before-named qualification) a railway company in common with every other company or individual possesses of regulating and managing its own affairs, either with regard to charges or accommodation, or to the agreements and bargains it may make in its particular business. Greater difficulty, no doubt, arises in dealing with cases in which the purpose and effect of the matter to be considered, although it may incidentally have the effect of prejudicing third parties, is in reality to benefit the company itself, than in which the immediate object is to give an undue advantage for the benefit of a third party. Yet we think that no serious difficulty will be found in ascertaining the principles on which the authority of the Court should be exercised. It may be convenient, in the first place, to advert to a distinction, not always kept sight of in argument, between cases in which the interest of the company sought to be promoted by the regulation or act complained of is one which arises with reference to the railway itself as to which the question occurs, and those in which the benefit sought to be obtained by the company is one which has reference to interests distinct from those of the particular railway, as where, for example, the company are the proprietors of another railway, or carry on some other business. In the latter class of cases, it appears to us clear that the company must be taken to be *quoad* the particular railway, in the position of third parties, and that they cannot, with a view to such separate interests, give an undue preference or impose an unreasonable disadvantage, any more than

that they could do so to promote the interests of any other party. Thus, if a railway company, being the promoters of one line from A. to B. and of another line from C. to D., were in order to obtain the custom of a particular individual on the first of those lines, on which they might be subject to competition from a rival line, agree to convey his goods from C. to D., at a cheaper rate than those of another person using only the latter line; or if a railway company carrying on, in addition to its business as carriers on the line, that of carriers to and from the termini of the railway, were, with a view to obtain additional custom in the latter, to carry on the railway for those who employed them as carriers to and from the railway at a lower rate than those who did not; in both these cases we should have no difficulty in holding that the company must be considered, as regards those separate interests, in the light of third parties, and that they cannot promote those interests at the expense of the right of the public to that equality on the particular railway which it was the intention of the Act of Parliament to secure. Greater difficulty and nicety arise in dealing with cases in which the purpose and effect of the thing complained of is the benefit of the company in their character of proprietors of a particular railway. In these cases the Court might feel greater reluctance to interpose, partly from an unwillingness to interfere with the parties in the management of their own affairs for their own advantage, partly from a disposition to give companies credit for acting on an enlightened view of their own interests as identified with those of the public; yet if the Court became clearly satisfied that the company were seeking to promote its own advantage by establishing an inequality which was unreasonable under the circumstances, and operated unfairly and injuriously on particular individuals, or that it was affording to one person or set of persons an advantage which it would not afford to another under similar circumstances, this Court would not hesitate to interfere to prevent such a result, although by so doing they might prevent the company from securing all the profit that it might otherwise derive from the use of its property. Thus, were a complaint made that a railway company, as between two intermediate stations, charged a higher rate than was due to the intermediate space in proportion to the charge made on the entire line of railway, this Court, if it were made to appear that the disproportion was not justified by the circumstances of the traffic—in other words, was an undue prejudice or unreasonable disadvantage to those using the part of the railway in question—would interfere to set aside such arrangement. So again, if an arrangement was made by a railway company whereby persons bringing a larger amount of traffic to the railway should have their goods carried on more favourable terms than those bringing a less quantity, although the Court might uphold such an arrangement as an ordinary incident of com-

mercial economy, provided the same advantages were extended to all persons under the like circumstances ; yet it would assuredly insist on the latter condition, and would interfere in the case of any special agreement by which the company had secured to a particular individual the benefit of such an agreement to the exclusion of others, or even where an attempt had been made, by keeping the agreement secret, to make it operate unduly to the prejudice of third parties. This reasoning appears to us effectually to dispose of the argument that the Court cannot interfere to prevent a railway company from fixing the rate of tolls to be taken on its railway in such manner as shall best promote its own interests, in cases where, by so doing, the company subjects others to unreasonable disadvantage, or operates to their prejudice by giving undue preferences to third parties. We proceed to consider the second ground taken by the defendants, which is in substance, that, having power to raise their rates of charge for carrying on their line, and having done so equally as regards all, they do not come within the statutory prohibition against undue preference or undue prejudice by affording other accommodation in addition to that of carrying on their line. We think this argument rests on two obvious fallacies—that of supposing the charge in question is one made by the company, in reference to their character and interest with respect to the railway ; whereas, in reality, the charge is made by them in a character and interest independent of the railway, namely, as carriers to and from the termini of the railway ; and secondly, that the company can convert that which is in reality a charge for collecting and delivering, as well as for carrying, into one for carrying only, by affixing to it the latter denomination in the table of fares. It is true, no doubt, that the Companies' Acts give them power to impose their own rates of charge for the carriage of this description of traffic ; but these Acts give them power to impose tolls or charges for collecting and delivering, and it is palpably an abuse of their powers if, under the name of a charge for carrying on their line, they impose, otherwise than with the assent of the parties concerned, a charge for a totally different thing ; and again, although the Legislature has conferred the power of imposing rates and charges, it has annexed to this power the obligation of imposing such rates equally, and the company cannot be permitted to evade this obligation by colourably pretending that that is a charge for carriage only, which is in fact a charge for other things as well as for carriage. The Court is bound to look at the transaction in its true light, and cannot suffer itself to be diverted from its duty of interfering to prevent, in effect, what is such an injustice, as it was the purpose of the Legislature to prevent, because the transaction is attempted to be covered over by a transparent disguise. Looking, then, at the alteration in the tolls in its true light, we are of opinion that the arrangement is objectionable, both as an undue preference given on the one hand, and as an

unreasonable disadvantage imposed on the other. It is an undue preference to the company in their separate capacity of carriers other than on the line of railway, inasmuch as they thereby practically secure to themselves the monopoly of the last mentioned traffic, to the entire exclusion of the complainants and all others. It is an undue prejudice and an unreasonable disadvantage imposed on the complainants, inasmuch as it is plain that their goods, and those of all persons employing them, as, indeed, the goods of all persons other than those who employ the company to collect and deliver, must be subjected, as compared with the goods of the latter, twice over to the expense attendant on collecting and delivering, if they employ others to collect and deliver for them, or to an unnecessary charge if they require no such accommodation."

To company as
carriers from
stations.

Following out the principle laid down in this case, it was decided that, though a railway company had been in the habit of carrying goods between the termini of their line according to a tariff of rates from which they made deductions to persons who brought or took away their goods to or from the termini up to a certain day, when they put a stop to these deductions with a view to exclude other carriers from competing with them as such; yet this was an undue prejudice to all such customers as did not desire to have their goods collected and delivered for them. (*Garton v. Great Western Railway Company*, 5 C. B. N. S. 669; 5 Jur. N. S. 685; 28 L. J. C. P. 158.)

In a somewhat similar case it was held that a railway company has no right to impose a charge for the conveyance of goods to or from their station when the customer does not require such service to be performed by them. (*Garton v. Bristol and Exeter Railway Company*, 6 C. B. N. S. 639; 5 Jur. N. S. 1313; 28 L. J. C. P. 306.) In this case the company closed its goods station at 5.15 p.m. against all persons except its agent, who had a receiving-house about a mile distant, and from whom the company received goods up to 8 p.m. For the conveyance of goods from the receiving-house to the station the agent charged 1s. 8d. per ton on all goods above three hundredweight, and 3d. for each package below that weight. Upon the complaint of a rival carrier, it was held that the refusal to

receive goods sent by him to the station at 5.15. p.m. unless sent through the receiving-house of the agent, was imposing upon him an undue prejudice, although it was sworn on the part of the company that the goods so brought to the station by their agent came there properly classified, weighed, and prepared for loading. It was also in this case held that the company created an undue preference by making special contracts with certain grocers and ironmongers at Bridgwater, under which the former agreed to carry all the grocery and ironmongery goods of the latter between Bristol and Bridgwater at a uniform rate of 6s. per ton, including delivery, while the general rate of charge for the carriage of goods between these two towns was 6s. 8d. per ton for first class, 8s. 4d. for second class, 12s. 6d. for third class, and 16s. 8d. for fourth class. This decision proceeded on the ground that it did not appear that the diminished charge was justified by any special circumstance of advantage to the company, or to meet competition for another railway or any other mode of carriage.

Under special contract.

A railway company cannot give a preference to a carrier (who also acted as superintendent of their goods traffic) to hold himself out as their agent for the receipt of goods to be carried on their line and his office as the receiving house of the company, and goods were received by him at that place *without* requiring the senders to sign conditions which the company required all other carriers who brought goods to their stations to sign. (*Baxendale in re and Bristol and Exeter Railway Company*, 11 C. B. N. S. 787.)

To one of the railway officials.

Trading in coal is not within the powers of a railway company; and upon an information filed against the Great Northern Railway Company, alleging the illegality thereof and the public mischief that would arise therefrom, an injunction was granted with costs to restrain the company from such trading in future, and from applying any of their funds to such purposes. In the circum-

Railway company cannot trade in coal.

stances the company were allowed to sell the coal they had already purchased, and which was then actually on hand. (*Attorney General v. Great Northern Railway Company*, 2 L. T. N. S. Ch. 653; 1 D. & S. 154; 29 L. J. Ch. 794; 4 Jur. N. S. 1006.)

Inventions or improvements.

It is an undue prejudice to prevent a carrier applying any new invention, or improvement for locomotion, where it appears that no damage is caused by such. For instance:—The right of traverse by the public on a canal cannot be confined within the state of science as it existed when the undertaking was projected. The public may adapt the inventions and discoveries of practical science to secure a more complete and efficient enjoyment of rights conferred, but such inventions and discoveries must not interfere with or endanger the existence of the property in or over which such rights exist. For instance, a carrier may claim a right to navigate a canal with boats propelled by steam, both for carrying as well as drawing barges, and in a case of this nature it was held in the Court of Chancery upon a bill to establish this right, after experiments made by an engineer at the request of the Court, that the plaintiff had a right to adapt modern improvements to the enjoyment of his rights, provided such improvements did not injure the canal or tend to destroy its existence. (*Case v. Midland Counties Railway Company*, 28 L. J. Ch. 727; 5 Jur. N. S. 1017.)

Carrier cannot compel company to unload in a certain way.

Though a carrier cannot compel a railway company to unload his goods and deliver the same by placing them in or adjacent to his waggons free of extra charge, yet he might be entitled to relief should the company afford facilities to a rival carrier by delivering goods as above-mentioned without extra charge. (*Cooper v. London and South-Western Railway Company*, 4 Jur. N. S. 762; 4 C. B. 738; 27 L. J. C. P. 324.) The company had been in the habit of unloading goods coming by railway from Southampton Docks, consigned to carriers in London, out of their trucks, and of placing them (by their servants) in or

conveniently near to the waggons of the consignees without extra charge. This practice they discontinued, refusing to allow their servants to unload the trucks without an extra charge for such service, except in the case of Pickford and Co., whose goods they continued to unload as before, the smallness of their quantity, and the fact of their being carried intermixed with the company's own traffic, rendering it (as the company alleged) more convenient to themselves to do so. The complainant, another carrier, was denied the aid of the company's servants in the unloading of his goods of the same description and coming from the same place, the company alleging that the same reason did not apply to his goods as to those of Pickford and Co., inasmuch as the former came in large quantities and in separate trucks. The Court refused to make absolute a rule enjoining the company to unload the trucks containing the complainant's goods, and to deliver the same to him by placing them in or adjacent to his waggons, holding the demand to be too large; but the Court intimated that if the complaint had been confined to the company's giving an advantage to Pickford and Co. in the unloading of their goods which they withheld from him, the complainant might have been entitled to relief.

CHAPTER III.

REASONABLE PREFERENCE AND ADVANTAGE.

Fair interests
of company to
be considered.

THERE are circumstances in which railway and canal companies have given advantages or shown preference to persons, companies, and to particular description of traffic, and yet have not contravened the Act of 1854; but in such instances it has appeared that the companies were only forwarding their fair interests, and not unreasonably preferring one person, company, or particular traffic to another. In dealing, therefore, with the first branch of the second section of that Act, which has been considered in the previous chapter, it is to be observed that the fair interests of the company are to be taken into account. (*Ransome in re and Eastern Counties Railway Company*, 1 C. B. N. S. 437; 3 Jur N. S. 217; 26 L. J. C. P. 91.)

Cost to com-
pany to be
considered.

Where a railway company was proceeded against for giving a particular trader an undue advantage by carrying his goods at a cheap rate, it was held that a company is justified in carrying goods for one person at a less rate than that at which the company carries the same description of goods for another, if there are circumstances which render the cost to the company of carrying for the former less than the cost of carrying for the latter. (*Oxlade v. North-Eastern Railway Company*, 1 C. B. N. S. 454; 3 Jur. N. S. 637; 26 L. J. C. P. 129.) In this case the company, in order to prevent the obstruction of their railway which would be caused by an unlimited coal traffic, ascertained the probable consumption of coal in the neighbourhood of each of their stations, and the sort required, and made arrangements with the collieries supplying the particular sort of coal for the requisite

supply ; they appointed dépôt agents to manage the sale of the coal, who from time to time ordered the quantity wanted from the collieries, and caused the waggons wanted for the carriage to be sent up. All the dépôts were in the hands of these agents, who accounted to the collieries for the proceeds of the sale. No coal-merchant was dealt with in this way, but only coal-owners ; but each dealer was treated alike and as one of the public. On a motion by a coal merchant to enjoin the company to afford him the same facilities for receiving and forwarding his coal, it was decided that the arrangements of the company were proper, and not such as gave or caused any unreasonable preference or disadvantage.

Where it was within the powers of a railway company to charge a certain sum as tonnage on all parcels of less than 1 cwt., it was held to be no undue preference to remit this charge in favour of a customer who consigned a quantity of such parcels containing the same description of goods to the same place. In this instance the cost and trouble which the company incurred were naturally not so great as when the parcels were of various descriptions, and intended for different destinations. (*Baxendale v. Eastern Counties Railway Company*, 4 C. B. N. S. 63 ; 27 L. J. C. P. 137.) The precise circumstances were as follows :—The company were empowered to charge certain tonnage rates or tolls for all articles, matters, and things carried or conveyed along the line, and to provide locomotive or other power for the carriage and conveyance of passengers, cattle, goods, &c., and to make reasonable charges for such carriage and conveyance in addition to the tonnage rates. The company might from time to time make such orders for fixing the sum to be charged by them in respect of small parcels not exceeding 1 cwt. each. The rates and tolls were to be charged equally and after the same rate per ton throughout the whole of the railway in respect of the same description of articles, and no reduction or advance

Profit guaranteed to company.

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in the rates and tolls were either directly or indirectly to be made partially or in favour or against any particular person or company. The company framed a scale of charges for the carriage of parcels not exceeding 1 cwt. each, with charges higher than the tonnage rates, but which included a reasonable charge for the use of their carriage and locomotive power. Under this scale, where a number of separate parcels (each weighing less than 1 cwt., but exceeding 1 cwt. if taken in the aggregate) were brought to the railway by the same person, and containing the same article, and all directed to the same person at their place of destination, the company charged tonnage or lower rate; but if similar parcels were brought addressed to different persons, they were charged the higher or parcels rate. The Court held that there was nothing to induce it, or which ought to induce a jury, to infer that the charges so made were unreasonable, regard being had to the additional trouble incurred by the company.

Expense of
carriage diminished.

The Act is not contravened by a railway company carrying at a lower rate in consideration of a guarantee of large quantities and full train loads at regular periods, provided the real object of the company is to obtain thereby a greater remunerative profit by the diminished cost of carriage, although the effect may be to exclude from the lower rate those persons who cannot give such a guarantee. It is therefore competent to a railway company to enter into special agreements whereby advantages may be secured to individuals in the carriage of goods upon the railway, where it is made clearly to appear that in entering into such agreements the company has only the interests of the proprietors, and the legitimate increase of the profits of the railway in view, and the consideration given to the company in return for the advantages afforded by them is adequate, and the company is willing to afford the same facilities to all others upon the same terms. (*Nicholson v. Great Western Railway Company*,

4 C. B. N. S. 366; 2 L. T. N. S. 234; 28 L. J. C. P. 89;
4 Jur. N. S. 1187.)

In order more easily to regulate the traffic, and out of consideration for the wants of the neighbourhood, a railway company divided their system into districts and reduced their tariff in favour of merchants sending a specific quantity of goods into these districts. This arrangement was disadvantageous to a particular trader who complained; but the Court dismissed the complaint as it regarded the arrangement as demanded by the wants of the neighbourhood and in accordance with the fair interests of the company. It was therefore held that a railway company can establish a system of carrying coals according to assigned districts comprising certain places on their lines and branches, carrying them within those several districts at certain lower rates for quantities not less than a train load of a specific number of tons fixed by the company. (*Ransome v. Eastern Counties Railway Company*, 4 C. B. N. S. 135; 4 Jur. N. S. 284; 27 L. J. C. P. 166.) In this case the specific train load fixed by the company was 200 tons. The complainants, who were coal dealers at I., also carried on that business at B. and also at M. and D., which are on another branch line communicating with that first mentioned, and also at H., which is another distinct branch. The districts assigned by the company were so adjusted that the places where the complainants dealt were distributed into three of them, so that in order to take advantage of the reduced rates the complainants would have to send from I. three full train loads, which was a larger quantity than they could profitably send to those districts; and thus they sustained great injury; whereas the rival dealers at Peterborough, by reason of one of the assigned districts embracing seven of those at which the complainants dealt, were enabled to send their coals in such quantities as to avail themselves of the reduction. It being sworn on the part of the company that these districts were adjusted, not with a view to give

Wants of a district to be considered.

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an undue preference to the one set of dealers over the other, but solely with regard to their own convenience and the wants of the neighbourhood, the complaint was not sustained. A somewhat similar dispute between the same parties arose and was decided against the complainants. (*Ransome v. Eastern Counties Railway Company*, 8 C. B. N. S. 709; 7 Jur. N. S. 99; 29 L. J. C. P. 329; 8 W. R. 527; 2 L. T. N. S. 376.) The Court there held that if the company is in the habit of carrying coals belonging to various owners who compete to supply the population along the line, and a tariff of charges is published by the company and approved by the Court of Common Pleas, by which they fix lower rates to be paid for the carriage of all coal consigned to places along the line, which are distributed into districts in quantities of 200 tons at a time, than if such population is supplied with inland coal from Peterborough, with seaborne coal from Ipswich, which is situate in No. 8 district, it is no undue preference to the Peterborough owners, and no undue disadvantage to the Ipswich owners, if the company, starting from S. with coal trains of 200 tons each, be in the habit of breaking off portions of these trains at C. in the progress to a certain district, leaving such portions of trains at C. whilst the residue goes on to its original destination, but the parts left at C. being always sent on by detachments of fewer than 200 tons each, and charging the lower rates for such detachments.

When a railway company has two distinct systems of railways, it is not undue preference to have two different tariffs for each system.

Unequal rates
on leased and
main lines,
when allowed.

The Glasgow and South-Western Railway Company, having become lessees of another railway which they worked in connection with their own line, published tables of rates applicable to the different railways. The rates charged on the leased line were higher than on the main line; and coal which was loaded on the leased line and carried along it and the main line was charged at

the higher rate for the whole distance ; while coal loaded on the main line and carried along the leased line was charged throughout at the lower rate. The Court of Session held that the equal rates clause in the Acts of Parliament applicable to the company, whereby they were obliged to carry goods passing over the same portion of and over the same distance along the railway, and under the like circumstances, " to all persons at the same rates," did not bar the company from charging rates in the manner specified. (*Finnie v. Glasgow and South-Western Railway Company*, 4 Feb. (reported 10 Mar.) 1853 ; 15 D. 523 ; 25 Jur. (Scot.) 301 ; 2 Stuart, 195.)

The case of *Great Western Railway Company v. Toorner*, 11 W. R. 464 Q. B. was not decided under the Act of 1854 ; but the Court considered there was no unreasonable prejudice to a particular description of traffic, and that certain charges by the company could not be disputed under the following circumstances. The company, who carried certain bulky commodities at a certain rate per ton, gave notice to the defendant that they would only carry such commodities on certain terms, that is, at a certain minimum rate per truck (capable of carrying three tons), whether filled or not, the rate per ton being far less than the ordinary rate. The defendant, although objecting to these terms, yet without any departure by the company therefrom, continued to send such commodities, sometimes in quantities of less than three tons, and claimed to be charged at the minimum rate per ton for the quantities actually carried. The Court held that he was not entitled to claim to be so charged, and was bound to pay at the rate charged per truck ; that there was nothing unreasonable therein, and that even if there were, the remedy was under the Railway Traffic Act.

Specific terms
for bulky com-
modities.

CHAPTER IV.

RIGHTS OF PASSENGERS.

Unreasonable preference by inequality of charge on same line.

To constitute an undue or unreasonable preference by reason of an inequality of charge for the conveyance of passengers, it must be an inequality in the charge for travelling over the same line or the same portion of the line. It is no ground of complaint that a company working the main line refuse to grant third-class return tickets to the branch line, if it appears that no such tickets are issued to other branches similarly situated. To induce the Court to interfere on a complaint by the proprietors of a branch line that a sufficient number of trains of the main line does not stop at the junction or stop at convenient times, it must be distinctly shown that sufficient accommodation is not afforded to meet the fair requirements of the public. The Court refused to grant an injunction on the complaint of a company having a branch on a trunk line to restrain the parent company from charging higher rates for the conveyance of passengers to the terminus of another branch line (in which they themselves were interested) extending over the same number of miles. (*Caterham Railway Company in re* 1 C. B. N. S. 410 ; 26 L. J. C. P. 161). In this case it was intimated that it is a good ground of complaint that there is no place of shelter provided at the junction for passengers on the branch line waiting the arrival of trains, the public being entitled in this respect to reasonable accommodation.

Public entitled to reasonable shelter at junctions.

Season tickets, granting of not compulsory.

The Court refused to grant a rule for an injunction against the Eastern Counties Railway to compel them to issue season tickets between Colchester and London, on

the same terms as they issued them between Harwich and London, upon a mere suggestion that the granting the latter (the distance being considerably greater) at a much lower rate than the former was an undue and unreasonable preference of the inhabitants of Harwich over those of Colchester. (*Jones v. Eastern Counties Railway Company*, 3 C. B. N. S. 718.)

A railway company is not excused from carrying passengers according to their contract upon the ground that there is no room for them in the train; but in order to avail themselves of this answer, they should make their contract conditional upon there being room. (*Hawcroft v. Great Northern Railway Company*, 21 L. J. Q. B. 178; s. c. 16 Jur. 196.) The mere taking of a ticket for a journey by railway does not, however, amount to a contract on the part of the company or impose upon them a duty to have a train ready to start at the time at which the passenger is led to expect it. (*Hurst v. Great Western Railway Company*, 19 C. B. N. S. 310.) But a railway company is liable for circulating time tables calculated to mislead; and it was held by Lord Campbell, C. J., and Wightman, J., that the table amounted to a contract on behalf of the company with those who should come to the station to forward them as stated in the table; Crompton, J., *dissentiente*. *Semble* per that learned judge that the company might also be liable as public carriers, professing to carry to a certain point, and bound as such to act up to their public profession. (*Denton v. Great Northern Railway Company*, 5 E. & B. 860; 25 L. J. Q. B. 129; 2 Jur. N. S. 185; 26 L. T. 216.) Carriers of passengers cannot be compelled to carry a passenger unless there be room in the carriage. (*Lovett v. Hobbs*, 2 Show. 428.) The Board of Trade have framed bye-laws for regulating travelling upon and using railways. Regulation 5 is to the following effect:—

No room in train does not free company from their contract.

Time tables, railway company liable for misleading.

Bye-laws by Board of Trade.

“ At the intermediate stations the fares will only be accepted and

the tickets furnished conditionally: that is to say, in case there shall be room in the train for which the tickets are furnished. In case there shall not be room for all, the passengers to whom tickets have been furnished for the longest distance shall (if reasonably practicable) have the preference, and those to whom tickets have been furnished for the same distance shall (if reasonably practicable) have priority according to the order in which tickets have been furnished, as denoted by the consecutive numbers stamped upon them. The company will not, however, hold itself responsible for such order of preference or priority being adhered to, and the fare will be immediately returned to any passenger for whom there is not room as aforesaid."

Refusal to admit passengers where there is a reasonable objection.

The bye-laws also refer to the payment of fares and good behaviour of passengers on the railway. It has been decided in the American Courts that although steamboat proprietors, holding themselves out as common carriers, are bound to receive passengers on board under ordinary circumstances, they may refuse to receive them if there be a reasonable objection. Thus they are not bound to admit passengers on board who refuse to obey the reasonable regulations of the boat, or who are guilty of gross or vulgar habits of conduct, or who make disturbances on board, or whose characters are doubtful or dissolute or suspicious, and *à fortiori* whose characters are unequivocally bad. And as passengers are bound to obey the orders and regulations of the proprietors, unless they are oppressive and grossly unreasonable, whoever goes on board under ordinary circumstances implied by contracts to obey such regulations, may justly be refused a passage if he wilfully resists or violates them. (Story on Bailments citing *Jencks v. Coleman*, 2 Sumner's Rep. 242; see also *Hodges*, 5th ed. p. 485.)

Damages, measure of, to a passenger for detention.

The measure of damages for detention has been laid down in a case where a tradesman took a ticket to go by railway from London to Hull. On arriving at Grimsby, he found no train ready to take him to Hull the same night, as it should have been according to the published time-bill. He slept at Grimsby, and in the morning paid

1s. 4d. fare to Hull. In consequence of the delay, he failed to keep appointment with his customers, and was detained for many days. The Court of Exchequer held that though he would have been entitled to have performed the contract at the expense of the railway company, yet not having done so, that he was not entitled to recover anything more than nominal damages in addition to the 1s. 4d., and perhaps the cost of his bed at Grimsby. (*Hamblin v. Great Northern Railway Company*, 1 H. & N. 408; 26 L. J. Ex. 20; 2 Jur. N. S. Ex. 1122; 28 L. T. 104.)

Should a passenger take a ticket, and be kept waiting for a considerable time at the station in consequence of the train being delayed by an accident, the effect of which was he missed another train to take him to the destination on the ticket, it has been held there was no evidence of a cause of action, as the company by their train bills gave notice they would not be liable for the trains not keeping time. (*Hurst v. Great Western Railway Company*, 34 L. J. C. P. 264; 11 Jur. N. S. 730; 12 L. T. N. S. 634.)

Time tables,
notice by com-
pany of non-
liability for
delay in.

A time table of a company contained the following words:—

“These tables show the time at which the trains may be expected to arrive and depart from the several stations; every exertion will be used to insure punctuality, but the departure or arrival of trains at the time stated will not be guaranteed, nor will the company hold themselves responsible for delay, or any consequences arising therefrom.”

An action was brought against the company by a passenger who arrived an hour and a-half too late to keep an appointment, which, had the train not been delayed by stoppages, could easily have been kept, and the jury, in answer to questions from the learned judge, found that there was no negligence or want of care on the part of the company. It was accordingly held that no contract

or duty had been proved by which the company could be made liable. (*Prevost v. Great Eastern Railway Company*, 13 L. T. N. S. 20; *Crompton, J.*)

Luggage,
company only
bound to carry
passengers'
personal.

A railway company conveying passengers for hire is at common law only bound to carry their personal luggage. If a passenger has merchandise among his personal luggage, or so packed that the company have no notice that it is merchandise, they are not responsible for the loss. But if the merchandise be carried openly, or so packed that its nature is obvious, and the company do not object to it, they will be liable. (*Shepherd v. Great Northern Railway Company*, 8 Exch. 30; 7 Railway Cas. 310; 21 L. J. Exch. 286 C. C. A. See also *Cahill v. London and North-Western Railway Company*, 10 C. B. N. S. 154; 7 Jur. N. S. 1164; 30 L. J. C. P. 289; 9 W. R. 653; 4 L. T. N. S. 246; affirmed on appeal, 13 C. B. N. S. 818; 8 Jur. N. S. 1063; 31 L. J. C. P. 271; 10 W. R. 391. And *S. P. Belfast and Ballymena Railway Company v. Keys*, 9 H. L. Cas. 556; 8 Jur. N. S. 367; 9 W. R. 793; 4 L. T. N. S. 841.)

Through book-
ing over two
lines one con-
tract.

When by a traffic arrangement between two railway companies passengers are booked through, the contract is one entire contract between the passenger and the company issuing the ticket. This was decided in *Mytton v. Midland Railway Company*, 4 H. & N. 615; 28 L. J. Exch. 385. The Midland Company and the South Wales Railway Company had a traffic arrangement for booking passengers through. The South Wales Company issued a through ticket to a passenger from Newport to Birmingham, the words, "*via* Midland from Gloucester," being printed on the ticket. His portmanteau was lost on the Midland line between Gloucester and Birmingham. Under the South Wales Company's Act a passenger's ordinary luggage is conveyed at his own risk. The fare paid was divided according to the mileage. The Court of Exchequer decided that he had

no cause of action against the Midland Company, the contract entered into by him being with the South Wales Company for the whole distance.

A railway company whose Act enabled every passenger to take with him his articles of clothing not exceeding a specified weight and dimension, and absolved the company from all liability or responsibility for the safe carriage of articles so carried, and who, by one of their published regulations, required passengers after taking their ticket to claim their luggage on the platform, and to see it marked with the company's labels, and declared that no luggage will be placed in the train until it is marked, and that they will not be responsible for any article of luggage that is not so marked, cannot refuse to place in their van and convey as passenger's luggage a package brought by a passenger and made up in a railway wrapper or a horse rug, on the ground that it consists of articles of clothing, nor can they oblige the passenger to take it along with him in the carriage in which he sits, so as to throw on him the responsibility of its safe carriage. (*Munster v. South-Eastern Railway Company*, 4 Jur. N. S. 738; 27 L. J. C. P. 308; 4 C. B. N. S. 676.)

Luggage,
labelling of.

Ordinary luggage for which a railway company are responsible does not include title-deeds which an attorney is carrying with him in his portmanteau for the purpose of producing on a trial in a local court, or bank notes carried by him for the purpose of meeting the contingencies of the case. (*Phelps v. London and North-Western Railway Company*, 19 C. B. N. S. 321; 11 Jur. N. S. 652; 34 L. J. C. P. 259; 13 W. R. 782; 12 L. T. N. S. 496.)

Luggage,
title-deeds
not ordinary.

Pencil sketches of an artist placed in his portmanteau do not form part of his ordinary luggage, so as to entitle them to be conveyed free of charge. (*Mytton v. Midland Railway Company*, 4 H. & N. 615; 28 L. J. Exch. 385.) A railway company that undertakes to convey a passenger with his luggage is bound to deliver it to him

Luggage,
artist's pencil
sketches not
ordinary.
Luggage,
company
bound to de-
liver at end
of journey.

Luggage exceeding £10 in value, notice of.

at the end of the journey, though it may be in the same carriage with him and under his personal care, and if the usual course of delivery is at a particular spot, that is the place of delivery. (*Richards v. London and South Coast Railway Company*, 7 C. B. 839; 6 Railw. Cas. 49; 13 Jur. 986; 18 L. J. C. P. 251. See also *Butcher v. London and South-Western Railway Company*, 1 Jur. N. S. C. P. 427; 16 C. B. 13; 24 L. J. C. P. 137; 3 Com. L. R. 137. And *Le Conteur v. London and South-Western Railway Company*, 35 L. J. Q. B. 40; 12 Jur. N. S. 266; 1 L. R. Q. B. 54; 14 W. R. 80; 13 L. T. N. S. 325.) Luggage exceeding £10 in value deposited in the cloak-room of a station, and a notice given to the depositor that "the company will not be responsible for any package exceeding the value of £10," protects the company from liability not only for the loss of such an article, but also for the delay in delivering it—at least when the delay is caused by no wilful act or default of the company and without their privity and knowledge. (*Pepper v. South-Eastern Railway Company*, 17 L. T. N. S. 469.) It has also been held in a case similar to the previous, where the article above the value of £10 has been lost, though the liability of the company has been limited to that sum, the company received the deposit not as carriers, but as ordinary bailees upon the terms contained in the printed notice, and was not responsible for the loss, and that the case was neither within the Carriers' Act (11 Geo. IV. and 1 Will. IV. c. 68) nor the Railway Traffic Act. (*Van Toll v. South-Eastern Railway Company*, 12 C. B. N. S. 75; 8 Jur. N. S. 1213; 31 L. J. C. P. 241; 6 L. T. N. S. 244.) The company is only responsible for the actual value of the articles deposited, except by special contract; and a commercial traveller who deposits in a waiting-room a case of patterns which is lost cannot claim damages beyond its actual value. (*Anderson v. North-Eastern Railway Company*, 4 L. T. N. S. Ex. 216.) When a passenger leaves an article at a railway station

Luggage, company only responsible for actual value of.

the company are not bound to send it to his residence without a reasonable charge for so doing, nor liable for its non-delivery when sent for, unless reasonable means are afforded to them of finding and identifying it; but if they afterwards detain it for any petty charge, they cannot charge warehouse room for it, and the proper course is to pay the charge and sue to recover it in the county-court; and if the article is ready for delivery the damage may properly be only nominal, whether on a special count or on a count for trover. (Per Cockburn, C. J., *Dimsdale v. London and Brighton Railway Company*, 3 F. & F. 167.) If a ticket given by a company on the deposit of an article does not on the face of it show at what time or hour the article is to be given up, and the company, within a reasonable time and after a reasonable demand, fail to deliver it up, the question whether there had been unreasonable delay is one for a jury alone to determine. (*Stallard v. Great Western Railway Company*, 31 L. J. Q. B. 137; s. c. 6 L. T. N. S. 217.)

Luggage need not be sent to passenger's residence without a charge.

Luggage, delay in giving up, question for a jury.

A servant travelling with his master on a railway may forward his luggage in the train and maintain an action in his own name for the loss of his luggage, although the master took and paid for his ticket. The liability of the railway company in such a case is independent of the contract. (*Marshall v. York, Newcastle, and Berwick Railway Company*, 16 Jur. 124; 11 C. B. 655; 21 L. J. C. P. 34.)

Servant travelling with his master may maintain action in his own name.

Though a railway company, by their Act, allow every passenger to take with him his ordinary luggage, not exceeding 150 lbs. in weight for first-class passengers, and 100 lbs. in weight for second and third-class passengers, without any extra charge being made for the carriage, they are not precluded from making special arrangements for the exclusion of luggage by cheap excursion trains. Should a passenger by an excursion train know that the company declined to carry any luggage for passengers with tickets (at a reduced fare) and hand luggage to a porter to be

Luggage, exclusion of by cheap excursion trains allowed.

put in the van, the company's servants are entitled to refuse delivery, either in course of the journey or at its termination, unless the carriage be paid, as the circumstances raise an implied contract for hire which justifies them in detaining it. (*Rumsey v. North-Eastern Railway Company*, 14 C.B. N. S. 641; 32 L. J. C. P. 244; 11 W. R. 911; 8 L. T. N. S. 666; 10 Jur. N. S. 208.) A passenger, therefore, who takes a ticket for an excursion train referring him to bills on which it was announced that luggage taken by the train was at the passenger's risk, is not entitled to sue for loss of his luggage by negligence, though he did not see the hand-bills or know of the condition. In such a case the 7th section of the Act of 1854 does not apply. (*Stewart v. London and North-Western Railway Company*, 10 Jur. N. S. 805; 33 L. J. Exch. 199; 12 W. R. 689; 10 L. T. N. S. 302.)

Bye-laws
cannot con-
travene spirit
of Act of Par-
liament.

Railway companies, though empowered by their Act of Parliament to make bye-laws with respect to passengers' luggage, cannot make these bye-laws contravene the spirit of their Act of Parliament. (*Williams v. Great Western Railway Company*, 10 Exch. 15.) In this case a section of the Act incorporating the company enacted that, without extra charge, it should be lawful for every passenger travelling on the railway to take with him articles of clothing not exceeding 40 lbs. in weight and 4 cubic feet in dimensions; and that the company should in no case be responsible for anything whatsoever carried upon the railway with any passenger other than such passenger's articles of clothing, not exceeding the weight and dimensions aforesaid, provided that nothing therein contained should extend to make liable the company further than where, according to law, stage-coach proprietors and common carriers would be liable. Another section enabled the company to make bye-laws for the good government of the affairs of the company and for the management of the undertaking. The company made a bye-law that every first-class passenger should

be allowed to carry 112 lbs. of luggage free of charge, but that the company would not be responsible for the care of the same, unless booked and the carriage thereof paid for. The Court held that the company had no power to make the bye-law, since it was in contravention of the first section.

The same bye-law was also the subject of another decision. The passenger having taken and paid for a second-class ticket, delivered her luggage to a porter of the company, telling him to what station she was going, and, after seeing him label it, took her seat in the train. On arrival at her destination, one of her boxes was missing, and it was admitted by the company it had been stolen. The bye-law allowed a second-class passenger 56 lbs. of luggage free of charge, but, as in the previous case, freed themselves from responsibility unless the luggage was booked and paid for accordingly. It did not appear that the passenger knew of the bye-law, or that it had been affixed at the stations, as required by the Act. The passenger having sued the company in a county-court for the loss, the judge, on these facts, held the company liable, and gave a verdict for the full value of the box. The Court of Common Pleas decided, on appeal, that the judgment must be affirmed, as the *prima facie* liability of the company was not conclusively rebutted, and there was therefore evidence to support the finding. (*Great Western Railway Company v. Goodman*, 12 C. B. 313; 16 Jur. 862; 21 L. J. C. P. 197.)

In an action against a railway company for not delivering luggage to another railway company at B., to be carried by such last mentioned company from B. to C., the plaintiff must give such evidence of a non-delivery at B. as preponderates over the presumption of a delivery. It is not enough to show that the luggage never reached C. or to give evidence of a loss which is equally consistent with a loss by the one company as by the other. (*Midland Railway Company*,

Luggage, evidence of non-delivery by one company to another.

app. *Bromley* resp. 17 C. B. 372 ; 2 Jur. N. S. 140 ; 25 L. J. C. P. 94.)

Luggage,
power to make
special contract
as to.

A railway company, it has been held, can make a special contract with a passenger, freeing them from liability for loss of luggage on a foreign railway through which the former had booked him. (*Zunz v. South-Eastern Railway Company*, 38 L. J. Q. B. 209 ; 20 L. T. N. S. 873.) In this case the passenger was booked through from London to Paris by the company, who were carriers by their railway from London to Dover. He travelled to Dover, thence to Calais by steamboat, and from Calais to Paris by a French line of railway. He registered his luggage at the London station of the defendants, who thereupon took possession of it. Upon the through ticket which he received from the defendants was the following notice :—

“ The English railway companies are not responsible for loss or detention of or injury to luggage of the passenger travelling by this through ticket, except while the passenger is travelling by their trains or boats, and in this latter case only when the passenger complies with the bye-laws and regulations of the companies ; and in no case for luggage of greater value than £5. Each company incurs no responsibility of any kind beyond what arises in connection with its own trains and boats, and in consequence of passengers being booked to travel over the railways of other companies, such through booking being only for the convenience of the passengers. Nor will the companies be responsible for the trains or boats being delayed or not meeting the trains in correspondence, nor for any consequences that may result to a passenger thereby.”

The luggage having been lost upon the French line of railway, and an action having been brought against the English company for the loss, it was held that the defendants were protected from responsibility by this special contract, and that they did not lose such protection by reason of the ticket or contract not having been signed by the plaintiff, the provisions to that effect in the “ Railway and Canal Traffic Act,” 1854, only applying to receiving, forwarding, and delivering of goods upon the

line of railway belonging to or worked by the company making the special contract.

In *Story on Bailments*, 324, it is stated :—

"It has been a matter of some controversy in what character the proprietors of stage coaches and steam-boats and rail-cars are to be regarded. The more important question has been in regard to their liability for the baggage of passengers, whether it is that of common carriers or only that of private persons engaging ordinarily for hire, that is, for due and reasonable skill and diligence in the undertaking. The general tendency of the authorities, however, has at all times been to the point that, as to the baggage of the passengers, the proprietors are common carriers. And the doctrine seems now firmly established, both in England and America, that the responsibility of coach proprietors carrying passengers with their baggage, stands as to their baggage upon the ordinary footing of common carriers. Mr. Bell has deduced this as the true modern doctrine on the subject."

Luggage,
liability of
companies for.

In *Great Northern Railway Company v. Shepherd*, 21 L. J. Ex. 114, 8 Exch. 30, Parke B. stated :—

Luggage (personal),
definition of.

"There being no special contract, the defendants were only bound to carry the plaintiff and his luggage, and under that term may be comprised his clothing and everything required for his personal convenience, and perhaps even a small present or a book might also be included in that term; but they were certainly not bound to carry merchandise and materials intended for trade, and to be sold at a profit. Had the company, with full notice of what the passenger was carrying, chosen to treat it as luggage, they would have been responsible for the loss; but their duty as common carriers was only to carry luggage and not merchandise, or articles wholly disconnected with personal luggage. If they had had notice, they might have refused to carry it without an additional payment, but they had no opportunity of acquiring this knowledge in this case. Whether this was done with any fraudulent intention it is not material to inquire, for without any fraud the passenger has so conducted himself that the company were not apprized of the nature of what he was carrying, and it is the same in effect as if a fraud had been intended."

See also *Keys v. Belfast Railway Company*, 8 Ir. C. L. R. 167; 9 H. L. C. 556; 8 Jur. N. S. 367.

Those articles only which travellers usually carry with them as part of their luggage come within the definition of "ordinary" or "personal" luggage which a railway

company is bound to carry with a passenger free of charge. A railway company refused to carry a "spring horse" for a child to ride on, weighing 78 lbs. and measuring 44 inches in length, tendered to them by a passenger who was entitled to take with him 112 lbs. of "ordinary" or "personal" luggage. The company were held to be justified in refusing to carry the article free of charge. (*Hudston v. Midland Railway Company*, L. R. 4 Q. B. 366; 38 L. J. Q. B. 213; 17 W. R. 703.)

Fares.

The following was a bye-law of the Great Northern Railway Company:—

"No passenger will be allowed to enter any carriage, or travel therein, without having paid his fare and obtained a ticket, which ticket such passenger is to show when required, and to deliver up before leaving the company's premises."

A question arose under this bye-law which was decided by the Court of Queen's Bench under the following circumstances: The plaintiff took tickets for himself, three boys and three horses, by a certain train which was afterwards divided by the company's servants into two parts, one being composed of passengers' carriages and the other of horse-boxes. The plaintiff, who retained in his possession all the tickets he had taken, travelled by the first-mentioned portion of the divided train, leaving the boys to follow by the second in the same boxes in which the horses were conveyed. The boys, being unable when requested to produce the tickets which had been taken for them, were prevented by the company's servants from entering the horse-boxes. This was held to be a breach of contract by the company for which they were responsible, notwithstanding the bye-law. (*Jennings v. Great Northern Railway Company*, 12 Jur. N. S. Q. B. 331.)

The case of *Sturge v. Midland Railway Company* (4 Jur. N. S. Ch. 273) decides an important point with respect to specific performances by a company of an alleged agreement to grant a free pass. The plaintiff, a corn merchant carrying on business in the towns through-

out the district traversed by a portion of the railway, in 1846 entered into an agreement with them that he would, in consideration of the company granting to him yearly, and during so long a time as he should carry on business at a certain town, a free pass over their line between two towns, have, for so long a time as the scale of charges of the company and a certain canal company should bear the same proportion to each other as they then bore, all his goods carried by the railway in preference to the canal company. That arrangement continued down to 1849, when the plaintiff at the request of the company, to prevent the annoyance to them of constant free passes, consented to pay £5 as a nominal consideration for the free pass. This arrangement continued down to 1857, when, after a long correspondence on the subject, arising out of the plaintiff's application for a renewal of the pass, the company refused to renew it. The alleged agreement of 1845 was not executed by or on behalf of the company. A bill was filed by the plaintiff against the company for specific performance of the agreement, and on demurrer for want of equity, the Court held that the agreement, being unilateral in its nature and uncertain in its terms, could not be specifically enforced, and therefore the demurrer must be allowed.

The Caledonian Railway Company fixed the rates for passengers travelling between the termini of the line according to a much lower scale than the rates chargeable from passengers travelling between intermediate stations. A person residing near one of the intermediate stations presented to the Court of Session a petition against the company under the Act of 1854, praying the Court to decree that the proceedings of the company were in violation of the statute. The Court dismissed the petition on the ground that the petitioner alleged no wrong done to himself. Lord President McNeill (now Lord Colonsay) observed :—

Fares, inequality of.

“Either the public prosecutor or any private party having an

interest might institute the complaint. But I do not see that the petitioner has shown any interest at all. I put the question whether he suffered any disadvantage by the proportional rating complained of; and the answer was that he did not complain of any disadvantage, but that he did not choose that parties travelling from Edinburgh to Glasgow should enjoy the benefit of a cheaper rate of travelling than he himself could enjoy. It does not appear to me to be a matter which the statute provides for at all. It provides for giving undue preference to parties *pari passu* in the matter, but you must bring them into competition in order to give them an interest to complain."

(*Hozier v. Caledonian Railway Company*, 17 Dunlop, 302; 27 Jur. (Scot.) 131.)

The decision in *Hozier's* case is similar to that pronounced some years previously in *Attorney-General v. Birmingham and Derby Junction Railway Company*, 2 Railw. Cas. 124. The ground of complaint was that the respondents charged passengers conveyed by their carriages from Derby to Hampton-in-Arden 8s., while they charged other passengers proceeding from Derby to Hampton-in-Arden and thence to London only after the rate of 2s. between Derby and Hampton-in-Arden. It was admitted that the charge of 8s. did not exceed the rate allowed by the respondents' Act of Parliament. The Lord Chancellor held, on a motion for injunction, that the respondents' Act was only meant to prevent the exercise of a monopoly to the prejudice of one passenger or carrier and in favour of another. That, even if the Court had jurisdiction, it would not interfere, unless it were clear that the public interest required it; and it being admitted that the higher charge was not more than the Act permitted, it did not appear that the public were prejudiced by the arrangement.

CHAPTER V.

RECEIVING AND FORWARDING TRAFFIC.

THE eleventh section of the Act of 1873 explains 36 & 37 Vict., c. 48, s. 11. and amends the second of that of 1854, as to facilities for receiving and forwarding traffic. These facilities are thereby declared to include the due and reasonable receiving, forwarding, and delivering, by every railway company and canal company, and railway and canal company, at the request of any other such company, of through traffic to and from the railway or canal of any other such company at through rates, tolls or fares (in the Act referred to as through rates).

There are nine sub-sections to the section (p. 24, *ante*) providing as to the manner in which it is to be enforced; and the last portion of it extends to steam vessels used, maintained, or worked by a railway or canal company, the same provisions.

The section has as yet not been the subject of discussion before the Commissioners; but it has been thought expedient to illustrate the spirit of the section by shortly stating the law as to reasonable facilities, which necessitates the introduction of some cases not precisely in point, but which, nevertheless, bear on the subject.

By 11 Geo. 4 and 1 Will. 4, c. 68, s. 5, every office, warehouse, or receiving-house which shall be used or appointed by a mail contractor or stage-coach proprietor or other such common carriers for the receiving of parcels to be conveyed, shall be deemed and taken to be the receiving-house, warehouse, or office of such mail contractor, stage-coach proprietor, or other common carrier.

Receiving
house of com-
mon carrier,
what.

There must be no unreasonable delay on the part of

Forwarding,
no unreason-
able delay in.

the company in forwarding goods. (*Johnassohn v. Great Northern Railway Company*, 10 Exch. 434; 24 L. J. Exch. 31.) In this case the company agreed with the plaintiff to carry for him, at the rate of 170 tons a day, 30,000 tons of coal from a colliery to London, the York and Berwick Railway Company undertaking to haul the waggons from the colliery to York; and it was agreed that the contract was founded on the basis that there should be no unreasonable detention of the waggons by the York and Berwick Company. The Court held that it was a condition precedent to the Great Northern Company's obligation to carry the coal, that there should be no unreasonable delay by the York and Berwick Company in hauling the waggons.

Goods ten-
dered, refusal
of.

Where goods have been tendered by a carrier to a consignee and refused by him, there is no rule of law that the carrier must give notice of such refusal to the consignor; he is only bound to do what is reasonable. (*Hudson v. Bazendale*, 2 H. & N. 575; 27 L. J. Ex. 93.) It was also held in this case that a carrier is not responsible for leakage arising from an imperfection in the bung of a cask intrusted to him to be carried and not caused by any negligence or omission on his part; but he is liable for loss arising from leakage or breakage occasioned by the gross negligence of himself and his servants, though he received the goods under conditions in which it was stipulated that he was not to be accountable for leakage or breakage. (*Phillips v. Clarke*, 3 Jur. N. S. C. P. 467.)

Leakage, re-
sponsibility
for.

Goods, power
of carriers to
refuse certain
class of.

In *Johnson v. Midland Railway Company*, (18 L. J. Ex. 366; 4 Ex. 367,) Parke, B., observed:—

“A carrier may profess to carry light goods only, and then he cannot be compelled to carry heavy goods; or he may say that he will carry from Manchester to London and not from the intermediate stations, and then he cannot be made to carry goods from those places; but as soon as he has publicly professed to carry in any particular manner, and so long as he does so, he is bound to carry the goods of any one, if he has room in his conveyance, and the price of the carriage be tendered when the goods are offered. Here,

however, there has been no public profession on the part of the company that they will carry coals from Melton Mowbray to Oakham. As to the proposition that the liability arises from the statutes under which the defendants are empowered to act, and that when they once become carriers they are bound to carry all kinds of goods from and to every station on the line, it appears to me that that proposition is not made out. There might have been great ground for that proposition if the acts had contained a prohibition to all other persons carrying on a like business on the line. But, on the contrary, the acts show that the public have a right to carry goods on a railway if they please. Practically, no doubt, that right has been found to be useless; we must, however, look not to the practical effect, but to the meaning of the Legislature; and I am of opinion that under this Act if the company become carriers, there is no obligation on them to take upon themselves the duties of carriers altogether, and on every part of their line; but they may confine their carrying to any part to which they choose to limit themselves, and they may afterwards relinquish the business if they please, though it is not necessary to determine that point now. I am of opinion that the 86th section of the Railway Clauses Act enables, but does not compel, the company to act as carriers."

Alderson, B., also observed:—

"Section 86 appears to me to be clearly permissive. It is admitted to be so to a certain extent, that it does not compel the company to become carriers; but it is contended that if they have once become carriers, it then imposes on them the obligation of carrying all goods from every part of the line to every other part. But this construction is inconsistent with section 89, which says that the company shall only be liable as common carriers."

In *Hare v. London and North Western Railway Company* (30 L. J. Ch. 823; 2 Johns and Hemm. 80) Wood, V. C., said:—

Railway company, power of to abstain from carrying.

"I cannot have any doubt—I felt none before in *Lancaster and Carlisle Railway Company v. North Western Railway Company*, (2 K. & J. 293; 25 L. J. Ch. 223), that there is a power in any railway company to abstain from carrying at all if it thinks fit. I quite agree if it becomes a carrier it must then carry for all; it cannot carry for some and refuse to carry for others. But I am quite at a loss to discover any indication of intention in any of the acts that they should necessarily become carriers, except for the conveyance of the mails and troops which it was thought Parliament was justified in imposing upon them. There are two indications very plain to the contrary; first, which is of course the highest indication, it is a

power which is conferred, and not a direction or mandate on the part of the government that they shall be carriers on the line; secondly, in what is called the Cheap Passenger Traffic Act (7 & 8 Vict. c. 85), and through all those series of Acts which provide for cheap trains, the provision is always that so long as they shall carry on the railway they shall have those cheap trains, indicating that it was probable or possible that they might themselves not become carriers. I say 'probable' for this reason: I do not know whether any such arrangement actually exists, but I can easily conceive the proprietors of short lines of railway joining to other large lines, making arrangements that they should not become carriers at all, by which the carrying should take place totally by those larger companies; the officers of the short lines not of course contravening the intention of the Legislature by resigning the management of their line, but simply taking tolls under any such arrangement as they may think fit; and accordingly, whether with foresight or not, Parliament did contemplate that there might be other companies starting for using these lines, because in the Railway Clauses Act there is a clause (section 92) that the railway shall be free on the payment of tolls; and it was in contemplation probably that other companies or persons might be induced, although the difficulties which are incident to the thing prevented such a course being taken, to become carriers upon the general line of railway."

Goods, damage of; what proof necessary.

In an action against a railway company for damage to the goods carried, it is enough for the plaintiff to prove the condition and value of the goods when delivered to the company, and when received by him; and if damaged in their hands, he is entitled to recover, and the fact that the damage was caused by bad packing goes only to the amount of damage. (*Higginbotham v. Great Northern Railway Company*, 2 F. and F. 795; *Crompton, J.*) In a similar action for injury to casks of oil, alleged by the company to have arisen from defect in the casks, it was left to the jury whether it arose from such defects, and whether, even if it did, the company knew or ought to have known thereof, and had acted negligently in sending them on in that state. (*Cox v. London and North Western Railway Company*, 3 F. and F. 77; *Mellor, J.*)

Goods, qualification of obligation to carry.

There is no obligation on a railway carrier, whether at common law or under the Railway Traffic Acts, to carry goods otherwise than according to their public profession.

(*Oxlade v. North Eastern Railway Company*, 15 C. B. N. S. 680.) When goods are delivered to carriers for conveyance, the implied contract of the carrier is safely and securely to convey the goods, and within a reasonable time. (*Raphael v. Pickford*, 2 D. N. S. 916; 5 M. and G. 551; 6 Scott N. R. 478; 7 Jur. 815; 12 L. J. C. P. 176.) The carrier is not bound to use extraordinary efforts, or incur extra expense, in order to surmount obstructions caused by the act of God, as a fall of snow. (*Briddon v. Great Northern Railway Company*, 28 L. J. Ex. 51; 32 L. T. 94.) If a railway company be prevented, by an unavoidable obstruction on the line, from carrying goods within the usual time, and the obstruction is occasioned by an accident resulting solely from the negligence of another company having parliamentary running powers over the line, the former is not liable to the owner of the goods for damage to them caused by the delay. (*Taylor v. Great Northern Railway Company*, 1 L. R. C. P. 385; 35 L. J. C. P. 210; 12 Jur. N. S. 372.) In the absence of an express contract, the obligation of a carrier of goods is to carry them according to the usual route professed by him to the public, as well as to deliver them within a reasonable time (*Hales v. London and North Western Railway Company*, 4 B. and S. 66); and it is no answer to an action for damages arising from delay, that they carried at the ordinary rate in which they conducted their business. (*Blakemore v. Lancashire and Yorkshire Railway Company*, 1 F. and F. 76; per Byles, J.) The owner of a ferry for carriages is bound to convey carriages and their contents. (*Walker v. Jackson*, 10 M. and W. 16; 12 L. J. Ex. 165.)

Goods, what implied on delivery of to carrier.

Goods, delivery of within reasonable time.

Goods, route by which to be carried.

Perishable articles such as fish must be forwarded in a reasonable time for delivery, and there must be no negligent delay by the railway company. (*Wren v. Eastern Counties Railway Company*, 1 L. T. N. S. Q. B. 5.) In this case, the course of conveyance of fish from Y. to H. was for a fish train to leave Y. for C., where the H. truck

Goods, perishable.

was detached, and afterwards attached to a passenger train for H., which arrived at H. at 8 A.M. in time for market. The railway company only charged "goods fares" for the carriage of fish, and gave a "fish consignment note," which only stipulated for the conveyance within a reasonable time. The plaintiff had dealt with the company many times previously on the above footing, and invariably received his consignments of fish at 8 A.M. in the morning by a passenger train. On the occasion in question, the H. truck was as usual detached at C., but not forwarded by the usual passenger train to H., and did not in fact arrive at H. until 11 A.M., when it was too late for market. The plaintiff then refused to accept the fish or the proceeds of the sale, and the company sold them. It was held that the company were liable to the plaintiff for the delay in delivering the fish.

Cattle, forwarding of.

So with respect to the forwarding of cattle in time for market. When railway companies, by their superintendent at one of their stations, promise that cattle would be forwarded in time for a particular market, and accept the carriage of the cattle on that understanding, they are liable for the damage caused by delay, whereby the cattle were too late for market. (*Brown v. Bristol and Exeter Railway Company*, 4 L. T. N. S. Ex. 830.)

Goods for market.

It is essential that goods required for market on a certain day, such as fruit, should be forwarded with expedition; and it is not a reasonable course of business for a railway company to keep at their station until the following morning goods intended for a certain market, marked in the waybill to be "forwarded immediately." (*Sharp v. North Eastern Railway Company*, 14 L. T. N. S. Ex. 487.)

Goods, delay in forwarding.

In *Collard v. South Eastern Railway Company* (30 L. J. Ex. 393; 7 H. & N. 79), the question as to delay in delivering hops and their consequent deterioration gave rise to a decision under the following circumstances: The plaintiff sent hops in bags from Kent to London by the defendants' railway for the purpose of delivery to

the vendee, a hop dealer. The hops were detained by the defendants several days, and were damaged by water, and the vendee refused to accept them. The plaintiff dried the hops, but when fit for sale the price had fallen; moreover, the stained part of the hops deteriorated the market value of the whole on the day the hops ought to have been brought to market, and the day on which they were afterwards brought to market, and was not confined to the value of the parts actually damaged, although the defendants had no notice that the hops were sent for sale and not for use; and it was also held that there was no difference between a delay occasioned by the detention of the hops in the hands of the carrier and the delay necessary for restoring them to a marketable state when delivered by the carrier in a damaged condition. (See Hodges, 5th ed., p. 568.)

Companies that hold themselves out as carriers of goods between two places one of which is beyond the confines of England are still subject to the common law liability of carriers for hire, and are bound to accept all goods which are reasonably tendered to them for conveyance between these limits. (*Crouch v. London and North Western Railway Company*, 14 C. B. 255; 7 Railway Cases 717; 2 C. L. R. 188; 18 Jur. 148; 23 L. J. C. P. 73.)

Goods, conveyance of out of England.

The Court of Session in Scotland has held that section 2 of the Act of 1854 which prohibits undue or unreasonable facilities or preferences to be given by railway and canal companies to particular persons did not apply to the case of arrangements made by a railway company whose line terminated at the sea, with a steamboat for the carriage across the sea of goods and passengers brought by the railway. (*Napier v. Glasgow and South Western Railway Company*, 4 Macph. 87; 38 Jur. Scot. 55.)

Goods, conveyance of by steamboat from termination of company's line.

In this case the Lord President (McNeill) observed:—

“It seems to me the most reasonable thing possible that they (the railway company) should make a transaction with a particular vessel.

88 RECEIVING AND FORWARDING TRAFFIC.

In the first place it requires a special arrangement and a special division of the profits, and a special confidence in the vessel and in the managers of the vessel, that they are to keep their time and to have the vessel seaworthy and everything else. It is a special arrangement in reference to doing something that is *ultra* of the statute altogether."

Animals, conveyance of by sea; liability of company as to.

Section 14 of the "Regulation of Railways Act, 1868," provides that:—

"Where a company by through booking contracts to carry any animals, luggage, or goods from place to place partly by railway and partly by sea, or partly by canal and partly by sea, a condition exempting the company from liability for any loss or damage which may arise during the carriage of such animals, luggage, or goods by sea from the act of God, the king's enemies, fire, accidents from machinery, boilers and steam, and all and every other dangers and accidents of the seas, river and navigation of whatever nature and kind soever, shall, if published in a conspicuous manner in the office where such through booking is effected, and if printed in a legible manner on the receipt or freight note which the company gives for such animals, luggage, or goods, be valid as part of the contract between the consignor of such animals, luggage, or goods, and the company, in the same manner as if the company had signed and delivered to the consignor a bill of lading containing such condition. For the purposes of this section the word 'company' includes the owners, lessees, or managers of any canal or other inland navigation."

Toll for carriage by land and sea, apportionment of.

Section 17 of the "Regulation of Railways Act, 1868," provides that:—

"Where any charge shall have been made by a company in respect of the conveyance of goods over their railway, an application in writing within one week after payment of the said charge made to the secretary of the company by the person by or on whose account the same has been paid, the company shall within fourteen days render an account to the person so applying for the same, distinguishing how much of the said charge is for the conveyance of the said goods on the railway, including therein tolls for the use of the railway, for the use of carriages, and for locomotive power, and how much of such charge is for loading and unloading, covering collection, delivery, and for other expenses, but without particularizing the several items of which the last mentioned portion of the charge may consist."

Toll over two railways worked by one company.

Section 18 of the same Act also provides that:—

"Where two railways are worked by one company, then in the calculation of tolls and charges for any distances in respect of traffic (whether passengers, animals, goods, carriages, or vehicles) conveyed

on both railways, the distances traversed shall be reckoned continuously on such railways, as if they were one railway."

At common law it is open to carriers to limit their common law liability by special contract with the consignors of goods. (*Peninsular and Oriental Steam Navigation Company*, app. *Shand*, resp. 11 Jur. N. S. 771; 13 W. R. 1049; 12 L. T. N. S. 808.)

Liability, limitation of by special contract.

When a carrier makes one contract for carriage, partly by land and partly by water, the contract is divisible so as to bring that part which applies to carriage by land within 11 George 4 and 1 Will. 4 c. 68. (*Le Conteur v. London and South Western Railway Company*, 1 L. R. Q. B. 54; 12 Jur. N. S. 266; 35 L. J. Q. B. 40; 14 W. R. 80; 13 L. T. N. S. 325.)

When goods are tendered by a railway company to the consignee, who refuses to pay the carriage, whereupon the company refuse to deliver the goods, it is the duty of the company to retain the goods at least for a reasonable time, and during that time to await any directions from, if not to communicate with, the consignee. (*Crouch v. Great Western Railway Company*, 2 H. & N. 491; 26 L. J. Ex. 418; 3 Jur. N. S. 796; 29 L. T. 354. Affirmed in the Exchequer Chamber, 3 H. & N. 183 in error; 27 L. J. Ex. 345.)

Goods, refusal of by consignee.

When a railway company receive goods at one terminus to carry them to another, they are answerable for any loss that may occur between them, although it may be on a line of railway that does not belong to them; and the receipt of goods so to be carried is *prima facie* evidence of such liability. (*Watson v. Ambergate*, 15 Jur. 448, C. C. A.) It has been decided that delivery of goods to a person who acted as agent for two railway companies over whose lines the goods had to pass, is evidence of a contract with the first company over whose line the goods have to pass, to carry the whole distance, and that that company is liable for damage to the goods during the journey. (*Webber v. Great Western Railway*

Goods conveyed by separate companies, liability for.

Goods, delivery of to agent; effect of.

Company, 3 H. & C. 771; 34 L. J. Ex. 170; 13 W. R. 755; 12 L. T. N. S. 498.) See also *Bristol and Exeter Railway Company v. Collins*, 7 H. L. Cas. 194; 5 Jur. N. S. 1367; 29 L. J. Ex. 41.

In the carriage of oxen the following condition on a waybill was signed by a drover :—

“For the convenience of the owner the company will receive the charges payable to other companies for conveyance of such cattle over their lines of railway; but the company will not be subject to liability for any loss, delay, default, or damage arising on such other railway.”

The oxen had been sent to the Craven Arms Station of the Shrewsbury and Hereford Railway Company, to be carried to Birmingham. The railway from that station to Shrewsbury belonged to that company, and the railway thence to Birmingham to the Great Western Company. The drover signed the waybill containing the before-quoted condition. One sum was charged for the carriage, which was to be paid at Birmingham. The oxen were placed in trucks belonging to the Great Western Company, and on the arrival of the train at Wolverhampton, it was found that the bottom of one of the trucks was broken, and one of the oxen dead and others injured. In an action against the Great Western Company, it was held that the contract was with the Shrewsbury and Hereford Company for the entire journey, and that the Great Western Company were not liable. (*Coxon v. Great Western Railway Company*, 5 H. & N. 274; 29 L. J. Ex. 165; 1 L. T. N. S. 442.)

Goods, limitation of responsibility for delivery of.

A railway company can limit their responsibility as to delivery. A condition stating that goods addressed to consignees resident beyond the immediate vicinity of the company's goods stations, would be forwarded by public carrier or otherwise as opportunity might offer; but that the delivery of the goods by the company would be considered as complete, and the responsibility of the company cease, when such carriers received the goods, and

that the company would not be responsible for loss or damage to goods beyond the limits of their railway, is a valid condition, though the company make one entire charge for the carriage from the place where the goods are received to the place beyond the limits of their railway where the goods are addressed. The company's responsibility accordingly ceases after the goods are delivered to a carrier in terms of the condition. (*Fowles v. Great Western Railway Company*, 7 Exch. 699; 7 Railway Cases, 421; 17 Jur. 214; 22 L. J. Ex. 76.)

A railway company that accepts a parcel for carriage, part of which is by their own line, part by sea, and the remainder by other lines, contract as common carriers with the consignor to carry the whole distance, and consequently are liable for damage to the goods after they leave the company's line and before delivery. It is not *ultra vires* for a railway company to carry beyond their own line by sea or coach. (*Wilby v. West Cornwall Railway Company*, 2 H. & N. 703; 27 L. J. Ex. 181; 4 Jur. N. S. 284; s. c. 30 L. T. 261.) See also upon a similar point *Hayes v. South Wales Railway Company*, 9 Ir. Com. L. R. 474.

Goods carried
beyond line,
liability for.

A railway company posting up in a particular station a list of tolls including those taken for coal is not sufficient evidence of their holding themselves out to the public as common carriers of coal from that station. (*Oxlade v. North Eastern Railway Company*, 9 W. R. 272; 3 L. T. N. S. 671, Exch.) Though this has been so held, it would devolve on the company, when a merchant desires to send coals from a particular station, and, under the Act, complains of their failure to carry them, to prove their inability from inadequate accommodation or otherwise to comply with the request.

Common car-
riers, evidence
of company
being.

If a railway company are required by their special Act to carry, as common carriers for hire, and to afford to all persons conveying or sending goods upon their railway every reasonable facility for loading and unloading

Toll, limitation
of by Act of
Parliament.

goods, and if the Act also authorized the company for carriage of goods to demand a toll not exceeding a certain sum per ton per mile, they are not entitled to charge an additional sum for services performed, accommodation afforded, and expenses and risk incurred in and about the receiving, loading, unloading and delivering the goods. (*Pegler v. Monmouthshire Railway and Canal Company*, 4 H. & N. 644.)

Tolls, exhibition of.

The forfeiture imposed on a railway company by the provision in sec. 88 of the "Railways Clauses Consolidation (Scotland) Act, 1845," that no tolls shall be demanded or taken by the company for the use of the railway during any time at which the boards with lists of tolls are not exhibited, applies only to tolls for the use of the railway, and not to tolls chargeable by the company as common carriers for the conveyance of passengers and goods. (*Scottish North-Eastern Railway Company v. Anderson*, 1 Macph. 1056; 35 Jur. (Scot.) 541), and tolls declared to be forfeited by the before-mentioned section are tolls for the use of the railway by a third party, and not charges by the railway company acting as common carriers. (*Scottish North-Eastern Railway Company v. Anderson*, 1 Macph. 1056; 35 Jur. (Scot.) 603.)

The omission on the part of a railway company to comply with their Act, that they should paint on boards an account of their several rates and tolls and affix them upon the toll-houses or buildings at which the rates and tolls should be taken, and that the company should not take any rates or tolls except during the time that the board should be so affixed, does not prevent the company from recovering such sums of money as they had a right to charge, and that the parties who had paid them could not as a result of such omission recover back such sums as they had been charged. (*Garton v. Bristol and Exeter Railway Company*, 1 B. & S. 112; 7 Jur. N. S. 1234; 30 L. J. Q. B. 273; 9 W. R. 734.)

Tolls for goods carried by canal.

If by a canal Act the company of proprietors are

entitled to demand a fixed sum for goods carried upon any part of the canal, "which said respective rates should be equal throughout the whole length of the said intended canal," it is still competent to the company to take a proportionably less toll per ton per mile for goods carried a given distance (five miles) along any part of the canal, than for goods carried less than that distance. It is also competent to the company to agree to carry at a lower rate for a particular individual, in consideration of a large guaranteed minimum toll, in order to enable them to enter into a successful competition with a rival line of railway. (*Strick v. Swansea Canal Company*, 16 C. B. N. S. 245; 33 L. J. C. P. 240; 10 L. T. N. S. 260.)

By 8 & 9 Vict. c. 20, s. 97, it is provided that, if on demand, any person fail to pay the tolls due in respect of any carriage or goods, it shall be lawful for the company to detain and sell all or any part of such goods liable to such tolls, and out of the monies arising from such sale to retain the tolls. Before the company has a right to sell, it is a condition precedent that a demand of the sum actually due for tolls be made. (*Field v. Newport, Abergavenny and Hereford Railway Company*, 3 H. & N. 409; 27 L. J. Ex. 396.) See also *North v. London and North Western Railway Company*, 14 C. B. N. S. 132; 9 Jur. N. S. 896; 32 L. J. C. P. 156; 11 W. R. 624; 8 L. T. N. S. 246.

Tolls, right of company to detain and sell for payment of.

A railway company cannot, however, detain the waggons of a third party as a lien for the default of a party who had contracted with them. (*North v. Great Northern Railway Company*, 6 Jur. N. S. C. P. 98.) The company entered into an agreement with A, for the delivery to them during a certain period of a certain quantity of coals to be carried by them for hire to be paid by A, and in his waggons; the company to have the right to detain any waggons of A on certain defaults on his part. In order to complete this agree-

ment A agreed with B to supply a portion of the quantity of coals, to be sent on to the line in waggons which had been hired for a term from A by B, but now relet for hire by him to A for this purpose. A having made default, the company seized and detained the waggons then on the line, as being A's, but they were in fact waggons sent on by B under his agreement with A. The Court of Common Pleas held the company could not retain them against B.

Lien under
agreement to
carry.

With respect to general and particular lien under an agreement to carry, the following point has been decided in the Court of Exchequer (in *Kinnear v. Midland Railway Company*, 19 L. T. N. S. 387). The plaintiff was assignee of a bankrupt colliery company, and the defendants were carriers of goods on their line of railway from their B. station, having also an establishment at D. on their line, where they made and repaired their own locomotive engines, and also occasionally repaired those belonging to colliery proprietors whose works were connected with the main line of railway. In June, 1864, the defendants opened a monthly credit account with the colliery company for the carriage of their goods by the defendants from the B. station, upon certain written conditions, the sixth of which provided that if the monthly accounts were not paid in accordance with the specified conditions the defendants were to have the right at any time to detain any goods or waggons in their possession by way of lien to secure the general balance owing to them. In July, 1864, a locomotive engine of the colliery company used by them for taking coals and goods from their works to the defendants' line at B. being out of repair, it was sent by agreement to the defendants' establishment at D. to be repaired by them, and was drawn by the defendants from B. to D. for that purpose, and a sum for such haulage was charged by the defendants to the colliery company in the monthly account for July, and was not disputed by the latter before their bankruptcy. Upon the subsequent adjudication of the

colliery company as bankrupts the defendants claimed to hold the locomotive engine which was then in their establishment under repair, as a security for costs and also for the general balance due to them. On a special case stated it was held by Kelly, C. B. and Channell, Pigott, and Cleasby, B.B., giving judgment for the plaintiff, that the terms of the sixth condition of the agreement between the defendants and the colliery company, which was intended merely to enlarge the rights of the defendants as carriers, and to give them as such a right of lien beyond what they would have at common law, applied only to coal and such like "goods" to be carried in the ordinary way, and not to the engine in question, which was delivered to the defendants, not under any contract to carry, but under an agreement to repair, to which the charge for haulage was incidental, and therefore that the right of general lien claimed by the defendants did not attach.

The Act of 1854 does not interfere with the right of a party aggrieved by overcharge to maintain an action to recover back the sums paid in excess. (*Baxendale v. Eastern Counties Railway Company*, 4 C. B. N. S. 63; 27 L. J. C. P. 137.) Overcharge.

As to recovery of overcharges which had been paid, see *Ashmole v. Wainright*, 2 Q. B. 837; 2 G. & D. 217; 2 Jur. 729.

Railway companies entering into an agreement with an individual, whereby the latter undertook to provide all waggons, horses, &c. necessary for the carriage of grain, merchandise, &c. between two towns, and to convey all grain, merchandise, &c. that might be presented to him for the purpose between these towns for a certain sum per ton, are not liable for terminating the agreement before the date at which it was to be mutually binding. Such an agreement is unilateral, the only contract on the part of the company is to pay the stipulated price for the carriage of such goods as might be presented for that purpose. (*Burton v. Great Northern*

Railway Company, 9 Exch. 507; 23 L. J. Exch. 184.)

Goods, place
for delivery of.

Although railway companies contract with the consignor of goods to deliver them at a particular place, they may deliver them at any place at which the consignee has ordered delivery. Though the consignor may have no knowledge of the instructions given by the consignee, who refuses to accept the goods, and they remain at the railway station and become deteriorated in value, the consignor has no right of action against the company for non-delivery, as such was by order of the consignee. (*London and North Western Railway Company*, appellants, v. *Bartlett*, respondent, 7 H. & N. 400; 31 L. J. Exch. 92; 8 Jur. N. S. 58; 5 L. T. N. S. 399.)

Goods, lien on,
by company.

The lien which a carrier has on goods for the carriage money is to be exercised subject to the obligation of keeping the goods for such a time in such a place as may be reasonably adapted for allowing the consignee means of taking possession of them on payment of the charge; but this is a question of fact to be decided according to the peculiar circumstances. (*Great Western Railway Company v. Crouch*, 4 Jur. N. S. Exch. 457.)

Carriers,
liability of
beyond own
district.

Carriers who have received goods to be taken to a point beyond that to which their own means of conveyance extend are liable for losses as carriers beyond that point. (*Muschamp v. Lancaster and Preston Railway Company*, 8 M. & W. 421.) In this case Rolfe, B., observed:—

“ I think the construction we are putting on the agreement is not only consistent with law, but is the only one consistent with common sense and the convenience of mankind. What I told the jury was only this, that if a party brings a parcel to a railway station—which in this respect is just the same as a coach-office—knowing at the time that the company only carry to a particular place, and if the railway company receive and book it to another place to which it is directed, *prima facie* they undertake to carry it to that other place. That was my view at the trial, and nothing has occurred to alter my opinion. As to the case which has been put, of a passenger

injured on the line of railway beyond that where he was originally booked, I suppose it is put as a *reductio ad absurdum*; but I do not see the absurdity. If I book my place at Euston Square and pay to be carried to York, and am injured by the negligence of somebody between Euston Square and York, I do not know why I am not to have my remedy against the party who so contracted to carry me to York. But at all events, in the case of a parcel, any other construction would open the door to incalculable inconveniences. You book a parcel, and on its being lost you are told that the carrier is responsible only for one portion of the line of road. What would be the answer of the owner of the goods? 'I know that I booked the parcel at the Golden Cross for Liverpool, and my contract with the carrier was to take it to Liverpool.' All convenience is one way, and there is no authority the other way."

A consignor has a right to direct in what way his goods should be conveyed, and a carrier has no right to disobey his instructions. This was decided in a case in Ireland under the following circumstances. A. sent a parcel from Belfast by the Belfast Junction Railway Company to Drogheda, carriage paid, directed, "Mr. Patrick McBride, Virginia, per rail to Drogheda, thence per mail car to Virginia." B., a common carrier, conveyed parcels from Kells station, on the Drogheda and Kells Railway line, to Virginia. Notwithstanding cautions from A. to both the Kells Railway Company and to B. not to convey parcels directed as above, the Kells Railway Company and B. persisted in conveying to Virginia parcels addressed as above by A. Upon the refusal of A. to pay for, and refusal to B. to deliver to him, a parcel brought to Virginia *via* Kells and thence per B.'s car, the Court of Exchequer in Ireland held that it was not the duty of B. as a common carrier to convey the parcel in question; that B. had no lien upon the parcel for its carriage, as the direction upon the parcel and the cautions given to him by A. constituted express notice by A. that his parcels should not be carried by that route. B. was in the position of an innkeeper receiving the horses of a guest of which he knows the guest is not the owner. Further, the Dublin and Belfast Junction Railway Company were

Goods, consignor may direct way in which carried.

the agents of A. for a specific purpose, viz. to forward the parcel by the route directed, and that there was no privity between A. and B. relative to the carriage of the parcel. (*Waugh v. Denham*, 16 Ir. C. L. R. 405.)

Goods, dangerous; restrictions as to carriage of.

By 29 & 30 Vict. c. 69, the goods or article commonly known as nitro-glycerine or glonoine oil are specially dangerous, and by section 6, no carrier (including by section 7 all persons or bodies of persons carrying goods or passengers for hire by land or water) shall be bound to receive or carry goods which are specially dangerous.

One who employs a carrier to carry an article of such a dangerous nature as to require extraordinary care in its conveyance must communicate the fact to the carrier, or he will be responsible for any injury that may result to the carrier or his servants from his omission to do so. If, therefore, a person cause a carboy containing nitric acid to be delivered to a servant of a carrier, in order that it may be carried by such carrier for him, and he do not take reasonable care to make the servant aware that the acid is dangerous, but only informs him that it is an acid, and he is burnt and injured by reason of the carboy bursting whilst in ignorance of its dangerous character he is carrying it on his back from the carrier's cart, the servant can maintain an action for damages for such injury. (*Farrant v. Barnes*, 11 C. B. N. S. 553; 8 Jur. N. S. 868; 31 L. J. C. P. 137.) If a railway Act state that every person who shall send or cause to be sent by the railway any vitriol or other goods of a dangerous quality, shall distinctly mark or state the nature of such goods on the outside of the package, or give notice in writing to the servant of the company with whom the same are left, at the time of sending, on pain of forfeiting £10 for every default, or being imprisoned, the sending of dangerous goods is therefore a criminal offence, and therefore a guilty knowledge on the part of the sender is necessary to render him liable under it.

(*Hearne v. Garton*, 2 El. & El. 66; 5 Jur. N. S. 648; 28 L. J. M. C. 16; 33 L. T. 256.)

"Public baggage, stores and arms," &c., sent by railway in charge of any of Her Majesty's forces, specified in 7 & 8 Vict. c. 85, s. 12, is "their baggage," no matter what may be the disproportion between the amount of baggage and the number of forces in charge of it, and must be carried by a railway company at the rates imposed by that section. (*Attorney-General v. Great Southern and Western Railway Company*, 14 Ir. C. L. R. 447, Exch.)

Baggage, public; rules as to carriage of.

Where a railway company, over whose line another company has running powers, is empowered to make regulations as to the construction of the carriages to be used on the railway, the *onus* lies upon the company having the running powers to show that the regulations are unreasonable and unnecessary. The fact of the regulations having been wholly or in part relaxed in the past is no reason for the Court of Chancery to interfere to restrain them from being strictly enforced in the future. (*Rhymney Railway Company v. Taff Vale Railway Company*, 7 Jur. N. S. Ch. 202; 30 L. J. Ch. 482.)

Running powers, rights given by.

The managing body of a railway company has no power to enter into a contract fixing and regulating the future traffic which may be carried on a line of railway which the company may thereafter be empowered to construct so as to give another railway company an interest in such traffic and profits. (*Midland Railway Company v. London and North Western Railway Company*, L. R. 4 Ch. 524.) This was a suit instituted for the purpose of having the rights and interests of the plaintiffs and defendants to a sum of money in the hands of the Railway Clearing House Committee ascertained and declared by the Court, and for the construction by the Court of an agreement dated 1st January, 1856. Prior to that date there existed two main lines or routes of railway, each composed of several distinct companies, by which through passenger and goods traffic was booked

Traffic, fixing of future: illegality of this.

between *London* and *Edinburgh*. One of these main lines belonged to the *Midland Railway Company* and some other companies in connection with it, and the other main line belonged to the *North Western Railway Company* and other companies who were defendants to the suit. With the view of putting an end to considerable competition which existed, the companies entered into the agreement of the before-mentioned date, providing that the gross revenues derived from the through traffic on the two routes should be divided by the *Railway Clearing House* in the proportion dated in a schedule to the agreement. The agreement was to continue in force for fourteen years. Subsequently the plaintiffs, by carrying on their old line for a certain distance, and thence on a new branch, and then by means of running powers they had acquired over one of the defendant companies' lines, acquired a new through route from *London* to *Edinburgh*, and had been booking and carrying through traffic thereon; and it was in respect of the proceeds of the traffic on such new through route that the question in the suit arose; the plaintiffs, the *Midland Railway Company*, contending that it did not come within the agreement of 1856, while the *North Western Railway* and connecting companies claimed under that agreement to be entitled to share in it. In giving judgment, *Kindersley, V. C.*, remarked:—

“ It is not easy to reconcile all the decisions on the question, as to what acts or contracts on the part of a railway company are or are not *ultra vires* and illegal. But I am of opinion, though not altogether free from doubt, that it would be *ultra vires* of the board of directors of such a company to enter into a contract fixing and regulating the future traffic which might be carried upon a line of railway which the company might thereafter be empowered to construct, and the profits of the traffic, so as to give to another railway company an interest in such traffic and profits. There must be a declaration that the profits of the traffic of the new route do not fall under the operation of the agreement.”

CHAPTER VI.

STATIONAL ARRANGEMENTS.

QUESTIONS of undue preference with respect to stational arrangements have at various times arisen, and these being distinct from those in relation to conveyance of traffic, it has been thought convenient to devote to them a separate chapter.

Injunctions have been obtained against railway companies to restrain them from requiring other carriers to bring their goods to the railway station at an earlier hour than they received their goods delivered at their own receiving office, and also to restrain the companies from admitting their own vans into their stations with goods to be despatched the same night at a later hour than those of other persons. (*Garton v. Bristol and Exeter Railway Company*, 2 C. B. N. S. 639; 28 L. J. C. P., 306. *Baxendale v. London and South Western Railway Company*, 12 C. B. N. S. 758.) These decisions were afterwards called in question. (*In re Palmer v. London and South Western Railway Company*, 1 L. R. C. P. 588.) The complainant in this case collected parcels and forwarded them by railway; the company refused to admit his vans into their station after 6.30 p.m., but admitted their own vans and those of Pickford and Co. at a later hour with parcels which they forwarded the same night. The time (6.30 p.m.) fixed by the company as that after which they would not receive goods to be forwarded the same night was reasonable. The company in admitting their own vans later acted *bona fide* and not with the intention of gaining an undue advantage over other collecting carriers; they admitted Pickford's vans in consequence of the injunction obtained by them before referred to. It was held by

Injunction to prevent closing of station to carriers and not to own agents.

Erle, C. J., and Montague Smith, J., that the exercise of the special jurisdiction by the Court being subject to no review, and depending in each instance on the special facts of the case, cases previously decided under it are not binding on the Court in the same manner that precedents in law are binding; that the injunction prayed would interfere with the transport of traffic, which it was the object of the Legislature to facilitate; and that it ought not to be granted. Willes and Keating, J. J., held that the cases of Garton and Baxendale, *ante*, were precedents binding on the Court, and also were rightly decided, and that the injunction ought to be granted. The Court being thus divided, the rule dropped. The case cannot therefore be deemed a precedent further than containing a very able opinion of Erle, C. J., on the facts as bearing on the Act. The same question again came before the Court in a recent case (*Palmer v. London, Brighton, and South Coast Railway Company*, 6 L. R. C. P. 194). The company, with a view to compete with other carriers in the collection and carriage of goods, established receiving offices in various parts of London from which goods were brought in vans to the railway station. The gates of the station were closed against the vans of the complainant and other carriers at 6.30. p.m., but the company's own vans were admitted at a much later hour, and the goods brought by them were forwarded by the same night's trains. The Court, Keating, Montague Smith, and Brett, J. J., held that this was giving an undue and unreasonable preference to the company's own traffic, to the prejudice of the complainant; and a rule for an injunction was made absolute with costs. The preceding case of *Palmer v. the London and South Western Railway Company* was observed upon. No question was raised in the case by the company that their arrangements were made with a view to the necessities of the public, and that there were no practicable means by which other carriers could be included in these or similar arrangements, and

the learned judges in their opinions did not express their views on this point.

If railway companies publish a printed notice fixed over the door of their stations for the reception of goods, that all goods received after 4 o'clock p.m. would be forwarded on the next working day, and long after the publication of this notice goods are brought to the station about half-past 5 p.m., and the person who brought them asks if there is time for the goods to proceed that evening, and receiving an answer in the affirmative, the goods are placed by the company's porters on the trucks on which goods are carried upon the railway; and if the same person had on former occasions taken similar goods at a later hour, which were never refused for being too late, and which had been forwarded the same evening, there is evidence to go to a jury of a special contract by the company to forward goods on the same evening on which they are delivered. (*Pickford v. Grand Junction Railway Company*, 12 M. and W. 766.)

Special contract opposed to a printed notice, how implied.

It is neither competent to a railway company to refuse to recognize or act upon general orders signed by the consignees of goods directing the company to hand over to a common carrier for delivery all goods which might arrive at one of their stations addressed to such consignees, nor to require the carrier to produce on each occasion a special order describing the particular goods which the consignees desired to have delivered to them by him, no such special (or any) order being required from their own agent. This is ground for an injunction, it being an undue and unreasonable prejudice to the carrier in the conduct of his business, and an undue preference and advantage to the company themselves.

Goods, to consignee's carrier, refusal to deliver, incompetent.

"It was urged that great difficulties might arise to the company if they are obliged to act upon these general orders, inasmuch as they would run the risk of delivering the goods to a stranger. But we cannot make any distinction of persons in a case like the pre-

sent. The company have no right to prefer themselves or any one carrier to another. Besides, this is only complaining of what is the ordinary state of things." Per Willes, J. (*Parkinson v. Great Western Railway Company*, 6 L. R. C. P. 554.)

In two cases the Court of Session in Scotland gave a directly contrary judgment, and decided that averments in a petition under the Act of 1854, that a railway company refused to give effect to general orders left with them to deliver goods arriving at their stations by a particular carrier and that the company refused to hand over goods for delivery by a particular carrier, to whose care they were addressed, were not relevant allegations of a contravention of the second section of the Act, and therefore not sufficient to warrant the summary procedure provided for in the Act. (*Wannan v. Scottish Central Railway Company*, 2 Macph. 1373 ; 38 Jur. (Scot.) 404.) In this case the complainant was a carrier, and the railway company did not deliver goods addressed to various persons in Perth and vicinity, though these were marked "per Wannan, Carrier," but delivered them to a firm of carriers who acted as the company's agents.

The second case was that of a railway company who employed agents for delivering in a large town in Scotland goods brought by the railway to the parties to whom they were addressed, and arranged within the station the goods to be delivered by these agents, and afforded to them other facilities in the use thereof. The Court of Session in Scotland held that the company, in refusing to give the same advantages to carriers to whom goods were consigned, were not guilty of a contravention of the provisions of the Act against the granting of undue preference to traders, the agents of the railway company being servants of the company and not traders. (*Pickford v. Caledonian Railway Company*, 4 Macph. 755 ; 38 Jur. (Scot.) 399.) In this case it was also decided that a railway company receiving from

another railway company goods addressed by the sender to A. B., Argyll Street, Glasgow, is not bound to regard markings by the latter company in the waybill or invoice as to the carriers to be employed in the delivery.

An important question upon which the Commissioners may be required to adjudicate remains undecided, viz.: Can a railway company having land adjoining one of their stations, let the whole or a great part of it to a coal merchant, who may not require or use the whole of the land, for the purpose of storing coal brought by their line to the exclusion of other merchants; and does this matter come within the provisions of the Traffic Act? This point was raised (*West v. London and North-Western Railway Company*, 5 L. R. C. P. 622), and the Court being equally divided, the rule obtained by the complainants dropped.

Power of railway company to let land adjoining a station, *quare*.

The company having land adjoining their station at Lubenham, allowed the complainants for some time to store coal in the usual way upon parts of it marked out by the company's officers for that purpose. Afterwards the company let the whole of the land to another coal merchant for the purpose of storing coal brought by their line. It appeared he did not require or actually use the whole of the land for this purpose. The complainants applied to the company to provide them on similar terms with land for storing coal, or to let them the part of the land not actually used by the other merchant. The company refused to do so. The complainants then applied to the Court for an order compelling the company to desist from allowing the rival merchant to store coals on the land or to give similar facilities to them. Bovill, C. J. (with whom Keating, J., concurred), was of opinion that the space of ground used for deposit of coals at the station must be considered a part of the railway within the meaning of the Act, and that the wharf accommodation to coal dealers is not only an usual, and ordinary and reasonable accommodation for the coal traffic coming to the railway, but that it is in fact so necessary, that

without it the trade in coal and the traffic in coal on the railway cannot practically and commercially be carried on. That the company had no right to grant greater facilities to a particular trader than to the complainants, and that they ought to be restrained from doing so. Montague Smith, J. (with whom Brett, J., concurred), was of opinion that the Court had no jurisdiction under the Act to entertain the complainants' application. That what the complainants wanted from the company had nothing whatever to do with the conveyance and transport of the coal, or with any facilities or accommodation relating to conveyance and transport. That what they really wanted was the company to provide them with a wharf or store where they might sell their coal when and as they please. That the second section enacts that a company shall afford "all reasonable facilities for the *receiving*, and *forwarding*, and *delivering* traffic upon and from their railways." And the enactments with respect to undue or unreasonable preference must be construed to apply to undue preference or undue prejudice in matters incidental to the conveyance of traffic, and to facilities for receiving, forwarding and delivering such traffic. That the complaint did not relate to the conveyance of the coal or to the receiving, forwarding, or delivering of it, and the Court had no jurisdiction under the Act to deal with the complaint in question. That if the Court were to extend its jurisdiction to things beyond those which relate to the conveyance of traffic, it would exceed the authority conferred on it by the Act, and it might then be asked to extend its interference to various matters not at all contemplated by it, such as the arrangements respecting refreshment-rooms, book-stalls and other like matters.

The opinions of the learned judges are worthy of consideration, and it is to be regretted no definite decision was obtained on the point.

Arrangements with respect to omnibuses at stations

Omnibus at
station.

come under the provisions of the Act. An omnibus proprietor who carries passengers and their luggage to and from a railway station cannot maintain an action against the company for refusing to allow him to drive his vehicle into the station-yard. (*Barker v. Midland Railway Company*, 18 C. B. 46; 25 L. J. C. P. 184.) This was an ordinary action, and was not brought under the provisions of the Act. There was no allegation on the part of the plaintiff that any other omnibus proprietor obtained an undue preference over him, and the judgment of the Court proceeded on the ground that the plaintiff had no intention to use the railway, and therefore experienced no obstruction. Further, he merely desired that other persons should use the railway, which gave him no right of action.

The Court, however, interfered where a railway company made arrangements at one of their stations with the proprietor of an omnibus running between the station and a town, to provide omnibus accommodation for all passengers by any of their trains to and from the town, and allowed him the exclusive privilege of driving his vehicle into the station-yard for the purpose of taking-up and setting down passengers at the door of the booking-office; and held that, in the absence of special circumstances showing it to be reasonable, the granting of such exclusive privilege to one proprietor and refusing to grant the like facilities to another, who also brought passengers from the same place, as well as from other places beyond, was a breach of the prohibition against the granting of undue and unreasonable preferences contained in the Act. (*Re Marriott v. London and North Western Railway Company*, 1 C. B. N. S. 499; 3 Jur. N. S. 493; s. c. 28 L. T. 305; 26 L. J. C. P. 154.)

To obtain an injunction with respect to the arrangements of public vehicles at stations, the complainant must make out a public inconvenience. (*Re Beadell v. Eastern Counties Railway Company*, 26 L. J. C. P. 250; 2 C. B.

Cabs, &c., at
stations.

N. S. 509.) In this case the company made arrangements with a cab proprietor whereby they gave him the exclusive right to have his cabs standing at their station and plying there. Another cab proprietor, who had been refused leave for his cabs to stand and ply at the station, applied for an injunction, which was refused on the ground just stated. The case of *Marriott, ante* (107), was distinguished from it by the Court in its judgment.

Following this case, a decision was pronounced refusing an application for an injunction to remove a restriction on certain complainants plying for hire with their carriages within the station of a railway company; Bovill, C. J., observing that it was much for the convenience of the public that railway companies should make arrangements for the attendance of a sufficient number of carriages for the conveyance of passengers arriving at their stations, whether in town or country; that if every one indiscriminately might bring his carriages for that purpose, it would give rise to great confusion and obstruction; that in all these cases therefore it must be clearly shown that the course complained of occasioned inconvenience to the public which was not proved by the affidavits produced; and that regard must be had to the general convenience of the public rather than to the wishes or interests of individual job-masters. Alluding to *Marriott's case, ante*, Willes, J., said, that that decision had been explained (*in re Beadell v. Eastern Counties Railway Company*) in the way put by the Chief Justice. (*In re Ilfracombe Public Conveyance Company v. London and South Western Railway Company*, W. N. 1868, p. 289.)

The Court refused to grant a writ of injunction against a company (who had granted exclusive right to a limited number of fly proprietors to ply for hire within their station) at the instance of a fly proprietor whose vehicles were excluded from the station-yard, although it was sworn by the complainant and by several other fly proprietors, who were likewise excluded, that occasional

delay and inconvenience resulted to the public from the course pursued. (*Re Painter v. London, Brighton, and South Coast Railway Company*, 2 C. B. N. S. 702.) It is impossible to lay down any fixed rule that can be applied to the admission of vehicles to station-yards. It is clear that a strong case of public inconvenience and undue preference to entitle a complainant to redress must be made out. Each case must naturally depend upon its own particular circumstances, and a very slight difference between one case and another may give rise to entirely opposite decisions.

While the regulation of book-stalls at stations, as intimated by Montague Smith, J. (in *West v. London and North-Western Railway*, ante), is not a matter to be dealt with under the Act, yet certain questions as to the forwarding of books and newspapers to and from stalls along the line may be a subject for adjudication by the Commissioners. (See *Holmes v. Eastern Counties Railway Company*, 3 Jur. N. S. Ch. 737; 29 L. T. 311; 3 Kay. and John. 675.) In this case it is possible a portion of the complaint against the company might have been remedied by proceeding under the Act, but it was naturally brought before the Court of Chancery, as it involved other matters with which the Common Law Courts could not interfere.

Book-stalls.

As to the duty of companies to make provision for the safety of live stock at their stations, it was decided that a railway company carrying live animals is not bound to provide fences or guards at the station where the animals may be landed, between the line and the station-yard, so as to prevent them straying on to the line. (*Roberts v. Great Western Railway Company*, 4 Jur. N. S. 1240; 4 C. B. N. S. 506; 27 L. J. C. P. 266.) With respect to the common law liability of railway companies, as carriers, extending to live stock conveyed by them, see *McManus v. Lancashire and Yorkshire Railway Company*, 2 H. & N. 693; 4 Jur. N. S. 144; 27 L. J. Ex. 201.

Live stock,
arrangements
at stations for.

The Railway Clauses Act, 8 & 9 Vict. c. 20, s. 86, does not impose on railway companies, acting as carriers, any further liabilities than those which attached to common carriers. Therefore, although a company carry coals and other goods for hire from one end of their line to the other, and carry goods other than coals from an intermediate station, they are not bound to carry coals from that station unless they have publicly professed to do so; and even if they have held themselves out as carriers of coals from that station, no action for refusing to carry coals from it will lie, unless it is shown that the company have conveniences at the station for receiving and carrying the coals. (*Johnson v. Midland Railway Company*, 6 Railw. Cas. 61, 4 Exch. 367; 18 L. J. Exch. 366.)

Specific performance involving personal service not enforced by Court of Chancery.

In *Chaplin v. North Western Railway Company* (5 L. T. N. S. Ch. 601), it appeared that an agreement had been entered into between the plaintiffs, who were carriers, and the company, by which, for certain considerations, certain duties were to be performed by the former in loading and unloading goods at the termini of the railway. It was thereby "declared and understood between the parties thereto that it was not the intention of the company to take such duties into their own hands unless their interests should appear to them absolutely so to require, in consequence of such duties not having been performed satisfactorily by the carriers or by the servants under their control." The company came to a resolution "that the present system of dealing with the goods traffic inside the ——— and other London stations was unsatisfactory, and that the interests of the company require that the loading and unloading of the goods traffic in such stations should be performed by the company themselves," and the Court of Chancery held that it could not interfere by injunction to restrain the company from acting up to their resolution—the agreement involving personal service, and as such being one of

which the Court was not in the habit of granting decree for specific performances.

A terminal station was jointly possessed by the Edinburgh and Glasgow Railway Company and the North British Railway Company. The former entered into an agreement with a third company having a terminal station of its own, by which it was proposed to introduce its passenger traffic into the joint station, and with that view a junction of the two lines of railway was proceeded with. In an application for interdict at the instance of the latter company against this agreement being carried into effect, the Court of Session in Scotland held that this introduction at the threshold of the joint station of the traffic of a third railway, although for a short distance it passed along the line of one of the co-proprietors of that station, could not be considered as the introduction of traffic fairly communicated to that line, but was a colourable attempt to give the third company the use and benefit of the joint station, which a co-proprietor had a right to resist. (*North British Railway Company, v. Edinburgh and Glasgow Railway Company*, 16 D. 250 ; 26 Jur. (Scot.) 99.)

Terminal station, joint possession of.

In the *London and North Western Railway Company v. Lancashire and Yorkshire Railway Company* (L. R. 4 Ch. 174 ; 36 L. J. Ch. 479), a bill was filed to restrain a railway company from placing an obstruction partly on a public footway and partly on land belonging to the plaintiffs, a rival railway company, so as to block up the access to a station of the plaintiffs, and alleged that the injury to the traffic by allowing the obstruction to remain would be irreparable, and that the act was done without any colour of title by the defendants. Wood V. C. held that this was one of the exceptional cases in which the Court would interfere to restrain a trespass by a stranger, and a demurrer made by the defendants was overruled.

Station, an obstruction to.

A railway station is private property, and is not such

Station private property.

a street or place as that persons can insist on the driver of a hackney carriage taking them for hire. (*Case v. Storey*, L. R. 4 Exch. 319; 38 L. J. M. C. 113; 20 L. T. N. S. 618.) In this case a cab was admitted within the station of the Great Northern Railway Company at King's Cross, for the purpose of taking up persons arriving by the train; one of the public who had not so arrived, entered the station and claimed to hire the carriage; the driver having refused to take him, was held to be guilty of no offence under the Acts relating to hackney carriages, the provisions of those Acts which make it compulsory on a driver to be hired only referring to cabs plying for hire in streets or places where the public at large have a right to go, and the station of the railway was not such a street or place, but private property. Kelly, C. B., remarked :—

“In one sense these cabs are undoubtedly plying for hire, but they are not so plying in a general sense, but only to such an extent and subject to such regulations as the license given them by the railway company may admit.”

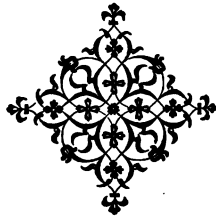
The same learned judge further remarked :—

“It is clear to me that railway stations are not either public streets or public roads. They are private property; and although it is true they are places of public resort, that does not of itself make them public places. The public only resort there on railway business, and the railway company might exclude them at any moment they liked, except when a train was actually arriving or departing.”

Station master,
limitation of
liability of
company for
act of.

The rule that where a person does an act by command of another, he is not responsible for consequences, if it is done within the scope of his authority, only holds good where the act is such that the superior would have been justified in doing it himself. If therefore a station-master arrest a passenger under the erroneous belief that he had not paid for the conveyance of a horse which he had with him, the company are not responsible, and the remedy is against the station-master. (*Poulton v.*

London and South Western Railway Company, 8 B. and S. 616 ; 36 L. J. Q. B. 294 ; 16 W. R. 309. See also *Roe v. Birkenhead Railway Company*, 21 L. J. Exch. 9 ; 6 Railw. Cas. 795 ; 7 Exch. 36.)



CHAPTER VII.

PARCELS.

IN dealing with undue preference generally, no description of traffic has occasioned more questions for decision than that of parcels, and a separate chapter is therefore now devoted to the subject.

Equal rates of carriage, no liability at common law to charge.

Though limited to a reasonable charge, there is no common law obligation on a carrier to charge equal rates of carriage to all his customers. (*Baxendale v. Eastern Counties Railway Company*, 4 C. B. N. S. 63; 27 L. J. C. P. 137.)

Parcels, carrier to inquire as to contents of.

A carrier receiving a parcel to be carried ought to inquire as to its contents, and if nothing is done by the party delivering it to deceive him or to give the transaction a false complexion, he is answerable for the parcel (*Walker v. Jackson*, 10 M. & W. 16; 12 L. J. Exch. 165), but a carrier has no general right in all cases to inquire and be informed of the contents of a parcel tendered to him to be carried. (*Crouch v. London and North Western Railway Company*, 14 C. B. 255; Railw. Cas. 717; 18 Jur. 148; 23 L. J. C. P. 73.)

Parcels of certain weight, special Acts as to.

By special Acts a railway company were entitled to charge for goods carried on their line at rates not exceeding certain rates per ton. They were permitted to charge a higher rate for parcels not exceeding 500 lbs. weight, provided that "articles sent in large aggregate quantities, although made up of separate parcels, such as bags of sugar, coffee, meal, and the like, shall not be deemed small parcels; but such terms should apply only to single parcels in separate packages." A carrier sent to the company at once many packages (all consigned to one

consignee, each less than 500 lbs.) of articles of similar classes, but not being separate packages of one article; the company charged for them as separate parcels, and they were held justified in so doing, the proviso applying only to articles that were of such a nature that a large quantity was generally made up in separate parcels. The same carrier also sent a parcel of coffee less than 500 lbs. weight; and afterwards, on the same day, another parcel of coffee, both consigned to himself and for the same train. When the first was left, notice was given that he would probably send more, but it was not received on any special terms. The company charged for them as separate parcels, and they were also held justified in so doing. (*Parker v. Great Western Railway Company*, 6 E. & B. 77; 25 L. J. Q. B. 209; 11 C. B. 545; 2 Jur. N. S. Q. B. 325; 27 L. T. 75.) In the same case it appeared that the company agreed with agents to collect and deliver goods for them, charging the public a small sum for so doing in addition to the charge for conveyance on the railway; to those agents the company allowed in addition a sum out of the receipts of the company. The plaintiff, who collected and delivered his own parcels, but was charged as highly as the rest of the public, complained that in effect this arrangement caused his goods to be charged higher than those sent through the agents, and that the difference was an overcharge. By their Act the company were to charge all persons equally for conveyance, but there was a proviso that they might make agreements as to the collection and delivery of merchandise; and there was an appeal given by the Act to the sessions by any one prejudiced by any arrangement giving special facilities to others. It was held that under these enactments the agreement with the agents, against which there had been no appeal, did not render the charges to the plaintiff overcharges.

Collections and delivery, additional charge for, when allowed.

In a dispute between the same parties the plaintiff was

Loading, &c.,
of goods, de-
duction for
when allowed.

found entitled to a deduction given to other carriers for the loading, &c., of goods. The company were authorized to make rates and tolls for goods and passengers conveyed by others than the company along the railway, and which should be reasonable and equal to all persons; and by a subsequent Act the charges for the carriage of any passengers, goods, &c., to be conveyed by the company, or for the use of any power supplied by them, should be at all times charged equally to all persons, and after the same rate per mile or per ton per mile in respect of all passengers and of all goods of a like description to be conveyed by a like carriage on the same portion of the line; and no reduction or advance in any charge for conveyance or for the use of any locomotive power to be supplied by the company should be made either directly or indirectly in favour of or against any particular company or persons travelling upon or using the same portion of the railway. The company always charged the public for the carriage of goods at a rate specified, and for such charge performed the duties of the loading, &c., of the goods; but by a general arrangement with carriers, the latter performed those duties, and were allowed by the company a deduction of 10 per cent. from the charges made to the public (this being a reasonable equivalent); the company having, in consequence of a disagreement, refused to make this deduction to a carrier willing to perform, and in fact performing all the duties performed by the other carriers, it was held that they were not justified in their refusal. (*Parker v. Great Western Railway Company*, 7 M. & G. 253; 7 Scott N. R. 835; 8 Jur. 194; 13 L. J. C. P. 105.) In the same case it was also decided that, if the company made an allowance to other carriers for the collection and delivery of parcels, they were bound to make the same allowance to the plaintiff, who also collected for himself. Further, that should the company make an allowance to carriers in cases where they disclosed the names of the

Consignor and
consignees,
carrier not
bound to give
names of.

consignors and consignees of the goods, they were not justified in withholding from a carrier who refused to make such disclosure any allowance to which he would otherwise have been entitled. If any of the public as a consignor (not being a carrier) brought several packages of goods addressed to different consignees and paid the charge, or if several of the public brought several packages addressed to one consignee (not being a carrier) who paid the carriage, the company charged upon the weight of the aggregate only ; but if under the same circumstances a carrier acted as consignor or consignee of goods, and the company charged separately for each package, the company were not justified in making this distinction between carriers and the public. (*Parker v. Great Western Railway Company, ante.*)

Charges for conveyance must be same to public as to carriers.

The North Devon Railway Company adopted and published a regulation under which goods of a certain description called "Manchester packs," if forwarded through specified agents at Manchester and Bristol, would be carried cheaper than if sent direct in the usual manner or through other agents, The Court granted an injunction enjoining them to charge the same rate for the carriage of the "Manchester packs" over their line as they charged for the like goods under any circumstances and by whomsoever they might be forwarded. (*Baxendale v. North Devon Railway Company*, 30 L. T. C. P. 154; 3 C. B. N. S. 324.)

Parcels forwarded by agents specified by company must not be carried at cheaper rates.

A railway company by an Act of Parliament was empowered to charge for the carriage of parcels, and, by a subsequent Act amending the former Act, was authorized to charge at so much per ton per mile. The provisions of the latter Act were held to override those of the former, so far as concerned parcels exceeding 500 lbs. in weight, but not as to parcels below that weight. The company obliged parties to pay more than the maximum amount allowed by the latter Act; and it was also held that the excess paid on all parcels

exceeding 500 lbs. in weight might be recovered back by such parties. (*Garton v. Bristol and Exeter Railway Company*, 1 B. & S. 112; 7 Jur. N. S. 1234; 30 L. J. Q. B. 273; 9 W. R. 734.)

Parcels, not competent to make compulsory a charge for delivery of.

A leading case (*Baxendale v. Great Western Railway Company*, 14 C. B. N. S. 1; 9 Jur. N. S. 1174; 32 L. J. C. P. 225; 8 L. T. N. S. 833. Affirmed on appeal, 16 C. B. N. S. 137; 10 Jur. N. S. 496; 33 L. J. C. P. 197; 12 W. R. 602; 9 L. T. N. S. 814. Exch. Cham.) settles an important question as to equality of charges. The company were entitled to charge for goods carried along the line such sum as they should think expedient, not exceeding the sum limited by former Acts, and provided that in whatever way the charges were made they should be made equally to all persons, and that it should be lawful for the company to enter into such arrangements as they should think fit with reference to the collection and delivery of goods, and upon such terms as the company and such parties respectively might be willing to accept and abide by. By a subsequent Act the company might demand for the carriage of small parcels, *i. e.* parcels not exceeding 500 lbs. weight each, any sum which they thought fit. The company having been in the habit of allowing a rebate in their charge for the conveyance of goods along their line when the goods were brought to or received at their stations, issued a notice that for parcels under 500 lbs. weight they would no longer make the usual allowance, and they then charged the through rate as if the goods had been collected and delivered by themselves. The Court held that the company were not entitled to charge parties who brought their goods to and received them at the different stations the same rate that was charged to others not so bringing and receiving their goods.

Manufactured goods, explanation of term.

When a company are entitled to charge a certain rate "for all cotton and other wools, drugs, and manufactured goods," this means not all goods on which human

skill was employed, but those articles made in what are, in popular language, manufactories. (*Parker v. Great Western Railway Company*, ante p. 115.)

A railway company has no right to open a hamper to ascertain whether it contains parcels addressed to different persons, and if one of these parcels be abstracted or lost in the course of the journey the company is responsible for its value to the consignor, as he was liable to the party to whom it was addressed. (*Crouch v. London and North Western Railway Company*, 2 C. & K. 789, Wilde.)

Parcels enclosed in a hamper.

If a railway company be empowered to charge for the carriage of small parcels any sum which they may think fit, they are bound to charge the public alike, and the fact of a party using the line being a common carrier does not justify the company in charging him more than the rest of the public, although the company might charge for packed parcels at a higher rate than an ordinary package. (*Crouch v. Great Northern Railway Company*, 9 Exch. 556; 23 L. J. Ex. 148; 7 Railw. Cas. 787.)

Small parcels must be charged for equally.

If any of the public as a consignor, not being a carrier, bring several packages of goods addressed to different consignees and pay the charge, or if several of the public bring several packages addressed to one consignee (not being a carrier), who pays the carriage, and the company charge upon the weight of the aggregate only; but if, under the same circumstances, a carrier acts as consignor or consignee of goods, and the company charge separately for each package, it has been held (in the case of *Crouch* before referred to) that they are not justified in making this distinction between carriers and other members of the public. (See *Baxendale v. London and South Western Railway Company*, 4 H. & C. 130; 35 L. J. Ex. 108; 1 L. R. Ex. 137.)

A railway company cannot, in addition to the charge for the carriage of goods between the place where the

goods are handed to them and the place where they are ordered to be delivered, charge for collection and delivery where they have not in fact collected or delivered the goods. Such charges, if imposed and paid under protest, may be recovered back. (*Garton v. Bristol and Exeter Railway Company*, 1 E. B. & S. 112; 7 Jur. N. S. 1234; 30 L. J. Q. B. 273; 9 W. R. 734. See also *Bazendale v. Eastern Counties Railway Company*, 27 L. J. C. P. 137; 30 L. T. 330; 4 C. B. N. S. 63.)

The Court of Common Pleas (*dissentiente* Erle, C. J.) decided that a railway company are bound to charge equally, and cannot lawfully demand for the carriage of parcels from station to station a sum which shall include the cost of collection and delivery, and so impose an unequal burden on those who do not require the performance of this latter service at their hands. (*Bazendale v. Great Western Railway Company*, 14 C. B. N. S. 1; 8 L. T. N. S. 833; 28 L. J. C. P. 81; 4 Jur. N. S. 1279; 32 L. T. C. P. 129.) This decision was affirmed in error (9 L. T. N. S. C. P. 814.) The same principle was also affirmed in *Garton v. Great Western Railway Company*, 5 C. B. N. S. 669; 5 Jur. N. S. 685.

Charges excessive,
grounds for
recovery of.

A carrier who is charged higher rates than those to other persons cannot recover the sums paid in excess on the ground simply that the charges made by the company were unequal; but if the company is in the habit of charging certain rates upon the aggregate weight of parcels containing the same kind of goods, and brought at one time by any one of the public not being a common carrier, and when common carriers send a number of such packages in one parcel addressed to another carrier, but each of such packages addressed separately to the person to whom it was to be sent, the company cannot insist upon charging for each parcel separately, and the amount so improperly charged may be recovered. Further, if the company, sometimes intentionally and sometimes by mistake, charge heavier rates than were set

out in the bills published by them, the excess paid can be recovered. (*Garton v. Bristol and Exeter Railway Company, ante.*)

By the 171st section of 5 & 6 Will. IV. c. 107, the Great Western Railway Company were authorized to fix the sum to be charged in respect of small parcels (not exceeding 500 lbs. weight), this provision not to extend to articles sent in large aggregate quantities, although made up of separate and distinct parcels, such as bags of sugar, coffee, &c., but only to single parcels unconnected with parcels of a like nature which might be sent on the railway at the same time. The company issued "scale bills," specifying in classes the charges to be made for carriage, each class containing various kinds of goods, and at the end a "miscellaneous class," comprising goods "not being aggregate of one class or kind," for which a higher tonnage rate was exacted, and also an additional charge of 2d. per package. It was held by the Court of Common Pleas that the company were not justified in charging under the "miscellaneous class" goods that were aggregate of several kinds but all contained in one class. Also that the carrier who brought the goods and received them from the company at the end of the journey was to be treated as the consignee, without reference to the ultimate destination of the goods. Also that the carrier was not entitled to any allowance in respect of assistance in the loading, unloading, or weighing given by his men to the company voluntarily or for the carrier's own convenience. (*Edwards v. Great Western Railway Company*, 11 C. B. 588.)

Parcels, what not entitled to be charged for as.

Loading and unloading, carrier not entitled to allowance for voluntarily assisting in.

A charge of 50 per cent. in addition to the usual rate for the highest description of goods made to carriers for packed parcels which contain articles of a dangerous character is an unequal charge. (*Bristol and Exeter Railway Company v. Garton*, 4 H. & N. 33; 5 Jur. N. S. 1172; 28 L. J. Exch. 169, Exch. Cham.)

Dangerous goods, unequal charge for.

Though a railway company cannot legally charge a

Packed parcels, refusal to carry.

greater sum for the carriage of a package containing several parcels belonging to different persons than for a package containing several parcels all belonging to one person, yet if the company refuse to carry at the ordinary rate packed parcels tendered by a carrier, whereby he is obliged to send them by a more circuitous route and at a greater expense, he is not entitled to recover damages for an alleged loss of business. (*Crouch v. Great Northern Railway Company*, 11 Exch. 742; 25 L. J. Exch. 137.)

The Grand Junction Railway Company were authorized by Act of Parliament to carry and convey all such passengers, goods, merchandise, &c., as should be offered to them for that purpose, and to make such reasonable charges as they might from time to time determine. The company were to fix the sums to be charged in respect of small parcels not exceeding 500 lbs. weight each. By another Act they were empowered to carry passengers and goods on other railways, and to make such reasonable charges as they should determine. And by another Act the charges by the former Acts authorized to be made for the carriage of passengers or goods should be at all times charged equally and after the same rate in respect of all passengers, goods, &c., conveyed or propelled by a like carriage or engine passing on the same portion of the line and under the same circumstances. The company published a list of rates for the carriage of merchandise divided into seven classes, of which the lowest was 16s. and the highest 60s. per ton; and for boxes, bales, hampers, or other packages or things under 112 lbs. weight, each divided, consigned, or intended for different persons or for more than one person, they imposed a charge of a penny per pound weight. The Court of Exchequer held that this last was not a reasonable charge in the case of a package above 500 lbs. weight made up by a carrier and directed to one person, although containing a number of parcels

Packed parcels directed to different persons.

under 112 lbs. weight, each consigned or directed to different persons. (*Pickford v. Grand Junction Railway Company*, 10 M. & W. 399; 3 Railw. Cas. 193. *Edwards v. Great Western Railway Company*, 11 C. B. 588; 21 L. J. C. P. 72.)

The Court of Common Pleas held in somewhat similar circumstances that a railway company were not justified in making an increased charge in respect of the conveyance of packed parcels, the jury having negatived that they incurred any additional risk or expense in the carriage. (*Piddington v. South Eastern Railway Company*, 5 C. B. N. S. 111; 4 Jur. N. S. 953; 27 L. J. C. P. 295.)

The recent leading case of *Sutton v. Great Western Railway Company*, 3 H. & C. 800 in error; 35 L. J. Exch. 18; 11 Jur. N. S. 879; 13 L. T. N. S. 221; affirmed in the House of Lords, L. R. 4; Ho. of L. Cas. 226; settled some important questions as to packed parcels and the inequality of charges therefor. The action was brought to recover back from the company an extra charge for the carriage of packed parcels. The plaintiff proved that he pursued in London the trade of collecting small parcels, inclosing them in one package and forwarding it to his agent in the country by the defendants' railway. By the defendants' tariff, parcels between 1 cwt. and 500 lbs. were divided into five classes, according to the description of goods they contained, and were charged at five different rates, but packed parcels were charged at the highest rate, with 50 per cent. in addition. The plaintiff's packed parcels were always charged at the highest rate, with the above additional percentage, without reference to the contents of the inclosures, which were generally unknown both to him and the company. The plaintiff tendered evidence to prove that four wholesale houses in London who daily sent large quantities of their own goods by the defendants' railway habitually received inclosures from

Packed parcels, inequality of charges therefor.

others which were sent in packed parcels, and that these wholesale houses were never charged according to the company's tariff for packed parcels. The defendants' counsel objected to the reception of this evidence, but the objection was overruled at the trial by the presiding judge (Martin, B.). No evidence was given that the company were ever directly informed that any one specific parcel sent by these wholesale houses was a packed parcel; but the evidence was that no questions were ever asked by the company. The plaintiff also tendered evidence to prove that at a reference in 1849 evidence was given in presence of the then solicitor and traffic manager of the company of the practice of wholesale houses in London to pack parcels in the way these four wholesale houses did. The defendants' counsel also objected to the reception of this evidence, but it was admitted by the judge. The plaintiff also tendered evidence by a person conversant with the business of carriers, that the practice of sending packed parcels had for many years been so general as to be notorious amongst carriers. The defendants' counsel also objected to the reception of this evidence, but it was admitted by the judge. The learned judge left it to the jury on this evidence to say whether in fact the defendants had made unequal charges on their customers, and if so, whether they had done it knowingly; and he directed the jury that if they found these facts affirmatively, their verdict must be for the plaintiff. The defendants' counsel excepted to the admissibility of this evidence, and to the direction to the jury. Subject to these exceptions the jury returned a verdict for the plaintiff. On the argument of the bill of exceptions in the Exchequer Chamber, before Cockburn, C. J., Erle, C. J., Byles, Blackburn, Keating, Mellor and Shee, JJ., judgment was given for the plaintiff (*diss.* Erle, C. J.), and the case was then brought on error to the House of Lords. After consulting some of the judges, the judg-

ment in the Court below was affirmed. By this decision it is therefore established : (1) That an absolute power in an Act of Parliament to fix charges for railway carriage is not rendered conditional by a subsequent clause requiring that all the charges made shall be made equally on like goods carried under like circumstances for all persons. The condition only attaches after the power has been exercised. (2) That a charge of so much per ton and 50 per cent. in addition is a tonnage charge, and therefore precisely within the words of the 50th section of 7 & 8 Vict. c. 3. (3) That the words, "goods of a like description and quantity," and "conveyed along the railway under the like circumstances," in 7 & 8 Vict. c. 3, and "goods of the same description" and "under the same circumstances" in the Railway Clauses Act, are used not with reference to the contents of the parcels, but to the parcels themselves, that is, like or different for the purposes of carriage; and these words are used with reference to the conveyance of goods, and not to the persons who send them. (4) That evidence tendered at a trial is admissible to show that mercantile houses were in the habit of dispatching by railway parcels containing numbers of other parcels, and sent from and to different persons; that these parcels were so packed by these mercantile houses for the accommodation of their own customers and friends, and these facts were well known in the trade, and (inferentially) to the railway company, but that a lower charge was made to these mercantile houses than to an ordinary carrier. (5) That evidence of the fact of the agent and manager of a railway company having been present as parties at a reference where facts of this sort are proved in their hearing is properly admissible as part of the proof that the company were informed and knew of the habits and practices of the mercantile houses, and knowingly charged a carrier a higher rate than was demanded of other persons for the carriage of like packed parcels of goods carried under the

like circumstances ; and (6) That money paid in excess under the above circumstances can be recovered back in an action for money had and received.

Another case at the instance of the same plaintiff (*Sutton v. South Eastern Railway Company*) involved in substance the same point, but it was agreed that the judgment delivered in the Great Western Railway case should govern it. After the decision in the Exchequer Chamber, the South Eastern Company still charged an over rate, whereupon the plaintiff commenced another action, and before trial applied to the Court of Exchequer under section 79 of the Common Law Procedure Act, 1854 (17 & 18 Vict. c. 125), for an injunction to restrain the company from charging him for the carriage of his goods otherwise than equally with all other persons, and after the same rate in respect of goods of the like description under the like circumstances. The Court refused to grant the injunction on the ground that there was no precedent for it, and the case was not one in which the Court would exercise their statutory power to grant one ; also that the plaintiff's proper course was to proceed with the action which he had commenced, under which he could recover the overcharges with interest. Channell and Pigott, BB., intimated that if the plaintiff had a remedy of this nature he could apply to the Court of Common Pleas under the Railway and Canal Traffic Act, 1854. (*Sutton v. South Eastern Railway Company*, 11 Jur. N. S. 935 ; 35 L. J. Ex. 38 ; 1 L. R. Ex. 32 ; 14 W. R. 130 ; 13 L. T. N. S. 438.). This decision proceeded mainly on the fact that the Court of Chancery had refused to grant an injunction under circumstances of a somewhat similar nature, viz. *Attorney General v. Sheffield Gas Consumers' Company*, 3 De G. M. & G. 304 ; 22 L. J. Ch. 84 ; and *The River Dun Navigation Company v. North Midland Railway Company*, 1 Railw. Cas. 153 ; but a demurrer for want of equity was overruled in *Bazendale v. West Midland Railway Company*, 3 Giff. 650 ; 8 Jur.

N. S. 1072; 6 L. T. N. S. Ch. 675. In this case the plaintiffs had places of business at towns where the defendants had stations, and were for many years employed by the defendants as their agents to deliver goods to the consignees. In January, 1862, the company ceased to employ the plaintiffs, and since that time goods had been sent to the latter either addressed to them or to their care, with the names of the consignees and stations of the towns in invoices, and other goods arrived at the same stations addressed to the plaintiffs "under marks" (which were explained to them by letter through the post office.) The goods which had directions the defendants refused to deliver to the plaintiffs, but handed them to their own new agent, to be delivered by him to the consignees, and the goods "under mark" were taken by the defendants' new agent to the plaintiff's place of business, and tendered for acceptance, and on being refused were taken back to the stations and afterwards delivered to the plaintiffs, the defendants charging for cartage. A demurrer for want of equity to a bill praying for a declaration that the defendants were bound to deliver to the plaintiffs the goods so addressed to them, deducting for and allowing to the plaintiffs for their services a sum from the through rate charged, was overruled by Sir J. Stuart, V. C. On appeal the decision was affirmed, but without prejudice to any question of jurisdiction at the hearing. (8 Jur. N. S. Ch. 1163, on appeal; 7 L. T. N. S. 297.)

Delivery of goods under mark except by own agent, effect of refusal.

An owner of goods has a right to countermand delivery of a package by giving due notice, such as delivery of a written order to that effect, to a clerk at the station of a company who acted as agents for them, and through whose line the goods passed *en route* for abroad. (*Scotthorn v. South Staffordshire Railway Company*, 22 L. J. Ex. 121; 17 Jur. 214; 20 L. T. 225; 8 Exch. 341.)

Delivery of goods, right of consignor to countermand.

The Grand Junction Railway Company became carriers

Delivery and compulsory charge for, effect of.

on the London and Birmingham lines, and published a list of charges for the carriage of goods from Manchester to London, among which "Manchester packs" were charged 3s. 3d. per cwt., or 65s. per ton. At the foot of this list was a notice that goods were brought to the station at Camden Town without extra charge, and that there was no charge for booking and delivery in London. The company made an agreement with certain persons that the latter should carry from the station at Camden Town and deliver in London all such goods carried by the railway, and for so doing should receive 10s. per ton out of the entire charge of 65s. per ton. The Court of Exchequer held that the charge of 65s. per ton, when made to any other persons who were ready to receive their goods at the station at Camden Town, was both unreasonable and unequal. (*Pickford v. Grand Junction Railway Company*, 10 M. & W. 399; 3 Railw. Cas. 193.)

Prepayment of parcel refused does not free company from liability.

If a parcel be delivered to a railway company directed to a person at a place beyond the limits of their line, and prepayment of the carriage be offered and refused on the ground that it had better be paid by the person to whom it was directed on its receipt, and the parcel be lost after it was forwarded from the point where the company's line ended, the company are liable for its loss. (*Muschamp v. Lancaster and Preston Junction Railway Company*, 8 M. & W. 421; 2 Railw. Cas. 607; 5 Jur. 656.)

Parcels sent by sea, delay of.

A carrier who sends a parcel containing several smaller parcels by sea, and in consequence of delay in the delivery loses the custom of two of his customers who were in the habit of sending parcels through him, is not entitled to recover damages in respect of such loss, as it is not the direct legitimate or probable result of the delay as reasonably to be anticipated by the parties. (*Mann v. General Steam Navigation Company*, 26 L. T. Ex. 247.)

A railway company acting as common carriers are bound to carry such goods as are tendered to them for the purpose of being carried, together with the proper charge for such carriage; and the company cannot insist upon the sender signing such conditions as are unreasonable. The company have no right to close their offices and refuse to receive goods that are tendered with the proper amount for carriage, while at the same time they continue to receive goods prepared, assorted and packed in the same manner from a particular individual. (*Gar-ton v. Bristol and Exeter Railway Company*, 1 B. & S. 112; 7 Jur. N. S. 1234; 30 L. J. Q. B. 273; 9 W. R. 734.)

Refusal to receive parcels except from particular individual.

The South Eastern Railway Company's Acts for the conveyance of goods and passengers from London to Folkestone prohibited the company from making unequal charges. The company obtained another Act enabling them to establish a communication by steam vessels with Boulogne, which contained no provision as to equality of rates for the carriage of goods. There was nothing in the law of France which disabled the company as public carriers from making such contracts for that purpose as they might think most for their own interest. The company by their tariff charged certain rates for small parcels, with a double charge for packed parcels. It was held by the Court of Common Pleas that so far as regarded the contract for the carriage of such parcels from Boulogne to London, there was nothing illegal in this increased charge. (*Branley v. South Eastern Railway Company*, 12 C. B. N. S. 63; 9 Jur. N. S. 329; 31 L. J. C. P. 286; 6 L. T. N. S. 458.) This decision was given before the provisions with respect to charges for conveyance of traffic by rail were extended to that conveyed by steam vessels worked or maintained by railway companies. The statutes so extending are: "The Railway Clauses Act, 1863," s. 35. "The Regulation of Railways Act, 1868," s. 16; and the Act of 1873, s. 11, *ante* p. 25.

Parcels, excessive charge for conveyance of by steam vessels.

CHAPTER VIII.

JUST AND REASONABLE CONDITIONS IN FORWARDING TRAFFIC.

37 & 38 Vict.,
c. 31, s. 7.

Conditions as
to forwarding
traffic.

THE 7th section of the Railway and Canal Traffic Act of 1854 still remains in force; the Commissioners' jurisdiction does not extend to it. There is a proviso in the section that

"Nothing contained in the Act shall be construed to prevent these companies (viz. a railway or canal company) from making such conditions with respect to the receiving, forwarding, and delivering of any of the said animals, articles, goods, or things, as shall be adjudged by the Court or judge before whom any question relating thereto shall be tried to be just and reasonable."

It will thus be seen that the Court or a judge is to decide the reasonableness of the conditions *after* they are made, but the Commissioners may be called upon to decide what should be a reasonable condition *before* it is made, the making of such a condition, involving as it might an unreasonable preference or undue prejudice. As such a question may come before the Commissioners, it has been thought fit to state a few of the principles that have been laid down in some cases under the Act of 1854, with respect to what are just and reasonable conditions.

Non-liability
for insufficient
packing un-
reasonable.

Claim for
damage, limi-
tation of time
for, reasonable.

A condition that a company will not be accountable for the loss, detention, or damage of any package insufficiently or improperly packed, is unjust and unreasonable; but a condition that no claim for damage will be allowed, unless made within three days after the delivery of the goods, nor for loss, unless made within three days of the time that they should be delivered, is just and reasonable.

A condition that in the case of goods conveyed at

special or mileage rate, the company will not be responsible for any loss or damage, however caused, is just and reasonable. (*Simons v. Great Western Railway Company*, 18 C. B. 805; 26 L. J. C. P. 25; *S. P. Garton v. Bristol and Exeter Railway Company*, 1 B. & S. 112; 7 Jur. N. S. 1234; 30 L. J. Q. B. 273; 9 W. R. 734. See also *Lewis v. Great Western Railway Company*, 29 L. J. Ex. 425; 5 H. & N. 867.)

Non-responsibility for goods at special or mileage rates reasonable.

A condition that a railway company should not be liable for loss of market, or other delay arising from detention, is a reasonable condition. (*White v. Great Western Railway Company*, 2 C. B. N. S. 7; 26 L. J. C. P. 158.)

Non-liability for detention reasonable.

The following condition with respect to the carriage of cattle was held to be reasonable:—

Loading and unloading, &c., of cattle.

"The company is to be held free from all risk or responsibility in respect of any loss or damage arising in the loading or unloading from suffocation, or from being trampled on, bruised or otherwise injured in transit, from fire or from any other cause whatsoever. The company is not to be held responsible for carriage or delivery within a certain or definite time, nor in time for any particular market."

(*Partington v. South Wales Railway Company*, 1 H. & N. 392; 2 Jur. N. S. 1210; 26 L. J. C. P. 105.)

Stipulations that horses should be carried at the owner's risk, or that the directors should not be answerable for damage to any horses conveyed by the railway, are not unreasonable or void. (*Wise v. Great Western Railway Company*, 1 H. & N. 63; 25 L. J. Exch. 258; *McCann v. London and North Western Railway Company*, 7 H. & N. 477; 31 L. J. Ex. 65; *S. P. Gannell v. Ford*, 5 L. T. N. S. 604—Q. B. But see *Lloyd v. Waterford and Limerick Railway Company*, post (p. 132).

Horses at owner's risk, reasonable.

But where a customer, on delivering some horses to be carried by a railway company, signed a ticket on which was the following memorandum—

Truck, in defective condition.

"This ticket is issued subject to the owner's undertaking all risk of conveyance, loading and unloading whatsoever, as the company will not be responsible for any injury or damage (howsoever caused), occurring to live stock of any description travelling upon the railway or in their vehicles,"

it was held not a just or reasonable condition. The truck in which the horses were conveyed proved defective, and the horses having in the course of the journey knocked a hole in it by means of which they injured themselves, the company were liable. (*McMann v. Lancashire and Yorkshire Railway Company*, 4 H. & N. 327; 5 Jur. N. S. 651; 28 L. J. Exch. 353; 33 L. T. 259, Exch. Cham.)

Value of a dog not declared can be limited.

A company can limit their liability for the value of a dog, when the same is not previously declared in terms of a condition to that effect. (*Harrison v. London, Brighton, and South Coast Railway Company*, 2 B. & S. 122; 8 Jur. N. S. 740; 31 L. J. Q. B. 113; 6 L. T. N. S. 466, Exch. Cham.)

The Waterford and Limerick Railway Company introduced into a special contract for the conveyance of horses at a low rate a condition exempting themselves from all liability in respect of the horses, whether in the loading or unloading, or in transit and conveyance, or whilst in the company's vehicles or on their premises. The Court of Queen's Bench in Ireland held this in itself to be an unjust and unreasonable condition. (*Lloyd v. Waterford and Limerick Railway Company*, 15 Ir. C. L. R. 37; 9 L. T. N. S. 89, Q. B.)

Alternative condition to carry horses at higher rate, claim for damage at time of unloading, unreasonable.

In this case it was also held that it could not be aided by an alternative condition whereby the company offered to

"Undertake the risk of conveyance only in consideration of an additional payment of twenty per cent. on the low rate of charge, but refused to entertain any claim for damage sustained by any animal conveyed at such additional rate, unless the injury was stated and pointed out to the company's agent at the time of unloading,"

that condition also not being in itself just or reasonable.

A railway company is entitled to the protection against responsibility for the carriage of animals given by the second proviso of section 7 of the Act of 1854, although no complete contract for carriage of the animal has been entered into, and no complete delivery of it has taken place; it is enough if the animal was in the course of being delivered to or received by the company. (*Hodgman v. West Midland Railway Company*, 5 B. & S. 173; 10 Jur. N. S. 673; 33 L. J. Q. B. 233; 12 W. R. 1054; 10 L. T. N. S. 609. Affirmed on appeal, 13 W. R. 758; 35 L. J. Q. B. 85, Ex. Cham.)

Company when entitled to protection given by second proviso of section.

If an owner of horses know that there is a certain rate for carrying horses on a railway by a passenger train and in horse-boxes, and that there is a lower rate for carrying them by goods train, and he prefer the latter mode of conveyance, it is a reasonable condition of the contract that the horses should be carried entirely at the owner's risk, and that such condition would protect the railway company if the horses were injured on the journey, but would not protect them from the consequences of delay where the contract was to deliver in a reasonable time. (*Robinson v. Great Western Railway Company*, 14 W. R. 206; 1 H. & R. 97; 35 L. J. C. P. 123; 1 L. R. C. P. 329.)

Owner voluntarily sending horses by passenger or goods trains, non-responsibility of Company by the latter reasonable.

An illustration of what is a reasonable condition may be taken from a decision under the Act of a telegraph company. In the Act of the Electric Telegraph Company, it was provided that the public, without preference, should have the use of the company's telegraph, subject to reasonable regulations to be made by the company. When a person wished to transmit a message by the telegraph a message paper was handed to him for his signature, on which was indorsed a notice, that messages of consequence ought to be repeated from the station to which they were addressed, and that a higher rate was

Telegrams, not repeated, company not responsible for.

charged for repeated messages, and that the company would not be responsible for mistakes in the transmission of unrepeatd messages. The Court of Common Pleas held that the company were not liable for the consequences of such mistakes; that the condition introduced into the notice was reasonable; and if it were not a reasonable regulation under the Act, it was such a limitation of liability as the company in the character of common carriers were entitled to create by notice to their customers. (*McAndrew v. Electric Telegraph Company*, 17 C. B. 3; 1 Jur. N. S. 1073; 25 L. J. C. P. 26.)

Case, unless declared insured, unreasonable.

A condition that a company will not be responsible for injury to a case of marbles, unless the same are declared insured according to their value, is not a just and reasonable condition. (*Peck v. North Staffordshire Railway Company*, 10 H. L. Cas. 473; 9 Jur. N. S. 914; 32 L. J. Q. B. 241; 11 W. R. 1023; 8 L. T. N. S. 768.)

Beyond limits of line, non-responsibility.

A railway company can by a condition free themselves from liability for loss or detention beyond the limits of their line. (*Aldridge v. Great Western Railway Company*, 15 C. B. N. S. 582; 33 L. J. C. P. 161.)

Fish, limitation of responsibility for conveyance of.

The following conditions with respect to the conveyance of fish were held just and reasonable, and the company entitled to give public notice that the sender should sign such conditions:

"The company shall not be responsible under any circumstances for loss of market, or for other loss or injury arising from delay or detention of train, exposure to weather, stowage, or from any cause whatever, other than gross neglect or fraud."

(*Beal v. South Devon Railway Company*, 3 H. & C. 337; 12 W. R. 1115; 11 L. T. N. S. 184; affirming the decision of the Exchequer, 5 H. & N. 875; 29 L. J. Exch. 441; 8 W. R. 651, Exch. Cham.) In this case it was laid down that

"For all practical purposes the rule may be stated thus—that the failure to exercise reasonable care, skill, and diligence, is gross

negligence. What is reasonable, varies in the case of a gratuitous bailee and that of a bailee for hire. From the former is reasonably expected such care and diligence as persons ordinarily use in their own affairs, and such skill as he has. From the latter is reasonably expected care and diligence such as are usual, or in the absence of usage, are to be expected by an analogy to the ordinary and usual course of similar business, and such skill as he undertakes to have, namely, the skill usual in the business for which he receives payment."

(See also *Grill v. General Iron Screw Collier Company*, 1 *Harr. and Ruth*, 654; 35 L. J. C. P. 321; 37 L. J. C. P. 205.)

A carrier is not bound to convey goods except on payment of the full price for the carriage according to their value; and if that be not paid it is competent to him to limit his liability by special contract. Therefore, where a carrier receives valuable goods to carry, after notice to the bailor that he will not be responsible for loss or damage to them, unless a higher than the ordinary rate of insurance be paid for the carriage, he receives them on the terms of such notice, which amounts to a special contract. But he is not thereby exempted from all responsibility; he is, notwithstanding the notice, bound to take ordinary care in the carriage of the goods, and is liable not only for any act which amounts to a total abandonment of his character as a carrier, or for wilful negligence; but also for a conversion for a mis-delivery arising from inadvertence or mistake, if such might have been avoided by the exercise of ordinary care. (*Wyld v. Pickford*, 8 M. & W. 443.)

Carrier not bound to convey goods unless carriage paid or by special contract.

A set of conditions in a consignment note is unreasonable and void under section 7 of the Act if any part of it is unreasonable; and a condition not to be liable for delay, however caused, is also unreasonable. (*Kirby v. Great Western Railway Company*, 18 L. T. N. S. 658.) Carrying cattle at "reduced fares," with a condition as to non-liability for delay, does not free a railway company from liability, though the fares are below the maximum

Conditions in consignment-note unreasonable if any part unreasonable.

allowed to be charged by the company's Act. (*Allday v. Great Western Railway Company*, 11 L. T. N. S. 267; 34 L. J. N. S. Q. B. 5; 11 Jur. N. S. 12; 5 B. & S. 903.)



PART III.

APPENDIX.

I. GENERAL ORDERS.

MADE PURSUANT TO THE STATUTE, 36 & 37 VICTORIA,
C. 48, S. 29, INTITULED,

*“An Act to make better provision for carrying into effect the
Railway and Canal Traffic Act, 1854, and for other
purposes connected therewith.”*

Interpretation.

1.

IN the construction of these orders and the forms herein referred to, words importing the singular number shall include the plural, and words importing the plural number shall include the singular number, and the following terms shall (if not inconsistent with the context or subject matter) have the respective meanings hereinafter assigned to them ; that is to say, “application” shall include complaint under this Act, “applicant” shall include any complainant under this Act, and “defendants” shall mean the persons or company against whom the application or complaint is made.

Application or Complaint to the Commissioners.

2. Every application made to the Commissioners under this Act shall be in writing or in print, or partly in writing and partly in print, and be signed by the applicant, or in the case of a corporate body, or company, or local or harbour board being the applicant, shall be sealed with their seal and signed by their secretary or other officer acquainted with the facts stated in the application. It shall contain a clear and concise statement of the facts, the grounds of application, and of the relief or remedy to which the applicant claims to be

Form of application generally.

7. Every application made to the Commissioners under section 11, sub-section 4 of this Act, shall be for a summons calling upon the forwarding company to show cause why the through rate or route, or through rate and route proposed by the applicant and objected to by the forwarding company, should not be allowed by the Commissioners. Under s. 11, sub-sec. 4.

8. Every application made to the Commissioners under section 11, sub-section 6 of this Act, shall be for a summons calling upon the forwarding company to show cause why the apportionment of the through rate proposed by the applicant and objected to by the forwarding company should not be allowed by the Commissioners. Under s. 11, sub-sec. 6.

9. Every application made to the Commissioners under section 14 of this Act shall be for a summons calling upon the railway company or canal company, against whom the application is made, to show cause why they should not distinguish in the book or books therein mentioned how much of the rate in respect whereof the application is made is for the conveyance of the particular description of traffic therein named on the railway or canal in question, including therein tolls for the use of the railway or canal, for use of carriages or vessels, or for locomotive or other tractive power, and how much is for other expenses, specifying the nature and detail of such other expenses. The applicant in such case shall state that he is interested in the matter, and show how he is interested therein. Under s. 14.

10. Every application made to the Commissioners under section 15 of this Act shall be for a summons calling upon the railway company, against whom the application is made, to show cause why the question or dispute therein mentioned with respect to the terminal charges of such company (the charges not having been fixed by any Act of Parliament) should not be heard and determined by the Commissioners, and why they should not decide what is a reasonable sum to be paid to such company for loading and unloading, covering, collection, delivery, and other services of a like nature. The application in such case shall state the actual amount of such charges, and the amount which the applicant contends that they ought to be. Under s. 15.

11. Every application made to the Commissioners under section 16 of this Act shall be for them to sanction the agreement therein mentioned, such sanction to be signified by certificate under their seal. Under s. 16.

entitled. It shall be divided into paragraphs, each of which, as nearly as may be, shall be confined to a distinct portion of the subject, and every paragraph shall be numbered consecutively. It shall be endorsed with the name and address of the applicant, and if there be an attorney acting for him in the matter, with the name and address of such attorney, and if he be an agent for another attorney in the matter, then also with the name and address of such other attorney. The application shall be according to Form No. 1 in the schedule hereto, or to the like effect.

Under ss. 6
and 13 of this
Act.

3. Every application made to the Commissioners under sections 6 and 13 of this Act, shall be for a summons calling upon the company complained of to show cause why a writ of injunction should not issue against them, enjoining them to do or to desist from doing the acts therein specified.

Under s. 8.

4. Every application made to the Commissioners under section 8 of this Act (unless both parties consent to refer the difference to the Commissioners) shall be for a summons calling upon the other party to the difference to show cause why it should not be referred to the Commissioners for their decision, in lieu of being referred to arbitration. The applicant shall also state whether or not it is a case in which any arbitrator has in any general or special Act been designated by his name or by the name of his office, or in which a standing arbitrator has been appointed under any general or special Act.

Under s. 9.

5. Every application made to the Commissioners under section 9 of this Act shall be signed by all the parties to the difference, or in the case of a corporate body shall be sealed with their seal, and shall be for permission to refer the difference to the Commissioners for their decision.

Under s. 10,
sub-sec. 1.

6. Every application made to the Commissioners under section 10, sub-section 1 of this Act, shall be for the approval by the Commissioners of any working agreement between railway companies, whereof they desire to have the Commissioners' approval, or shall be for the exercise of any other powers (to be specified in the said application) transferred by the said sub-section to the Commissioners with respect to the approval of such working agreement.¹

¹ Since the issuing of the general orders the Commissioners have made a regulation, and issued directions relating to working agreements, for which see end of Appendix.

7. Every application made to the Commissioners under section 11, sub-section 4 of this Act, shall be for a summons calling upon the forwarding company to show cause why the through rate or route, or through rate and route proposed by the applicant and objected to by the forwarding company, should not be allowed by the Commissioners. Under s. 11,
sub-sec. 4.

8. Every application made to the Commissioners under section 11, sub-section 6 of this Act, shall be for a summons calling upon the forwarding company to show cause why the apportionment of the through rate proposed by the applicant and objected to by the forwarding company should not be allowed by the Commissioners. Under s. 11,
sub-sec. 6.

9. Every application made to the Commissioners under section 14 of this Act shall be for a summons calling upon the railway company or canal company, against whom the application is made, to show cause why they should not distinguish in the book or books therein mentioned how much of the rate in respect whereof the application is made is for the conveyance of the particular description of traffic therein named on the railway or canal in question, including therein tolls for the use of the railway or canal, for use of carriages or vessels, or for locomotive or other tractive power, and how much is for other expenses, specifying the nature and detail of such other expenses. The applicant in such case shall state that he is interested in the matter, and show how he is interested therein. Under s. 14.

10. Every application made to the Commissioners under section 15 of this Act shall be for a summons calling upon the railway company, against whom the application is made, to show cause why the question or dispute therein mentioned with respect to the terminal charges of such company (the charges not having been fixed by any Act of Parliament) should not be heard and determined by the Commissioners, and why they should not decide what is a reasonable sum to be paid to such company for loading and unloading, covering, collection, delivery, and other services of a like nature. The application in such case shall state the actual amount of such charges, and the amount which the applicant contends that they ought to be. Under s. 15.

11. Every application made to the Commissioners under section 16 of this Act shall be for them to sanction the agreement therein mentioned, such sanction to be signified by certificate under their seal. Under s. 16.

Under s. 17.

12. Every application made to the Commissioners under section 17 of this Act shall be for a summons calling upon the railway company, against whom the application is made, to show cause why a writ of injunction should not issue against them, restraining them from permitting and suffering the canal therein mentioned, or parts thereof, or works belonging thereto, to remain unrepaired, or in want of dredging, or not in good working condition, or without proper supplies of water thereto; and also enjoining them to keep and maintain the said canal or such parts thereof, or such works thereto belonging, thoroughly repaired or dredged or in good working condition, or to preserve the supplies of water to the same. The application in such case shall specify the obstruction, non-repair, or other defect sought to be remedied, and show in what part of the canal or works such obstruction, non-repair, or other defect exists.

How left at the Commissioners' office.

13. The application so written or printed, or written and printed, and signed or sealed and signed as aforesaid, shall be left with the registrar to the Commissioners at their office, together with three copies thereof, and with any documents, maps, plans, time tables, and special Acts referred to therein or which may be useful in explaining or supporting the same. The registrar shall give a receipt for the same, which shall be according to Form No. 2 in the schedule hereto, and he shall enter particulars of the application, together with the date of its being left with him, in a book to be kept for that purpose. He shall also make out a list of the applications so left according to the order in which they are received by him, and such list may be inspected at the office during office hours, and shall for that purpose be put upon a notice board appropriated to proceedings under this Act. The applications shall be heard by the Commissioners so far as it may in their judgment be practicable according to the order in which they are so entered upon the list.

Suspension of Proceedings.

Communication by Commissioners to company complained of.

14. If the Commissioners think fit, in pursuance of section 7 of this Act, to communicate the application to the company against whom it is made, so as to afford them an opportunity of making observations thereon before requiring or permitting any formal proceedings to be taken thereon, they shall give notice thereof to the applicant within five days from the date of the application having been left at their office, and there-

upon all formal proceedings thereon shall be suspended until further notice from the Commissioners to the applicant.

15. The Commissioners may also within the said period of five days require further information or particulars or documents from the applicant, and may suspend all formal proceedings upon the application until satisfied in this respect.

Commissioners requiring further information.

16. If the Commissioners at any stage of the proceedings think fit to direct inquiries to be made under section 25 of this Act or under section 3 of the Railway and Canal Traffic Act, 1854, they shall give notice thereof to the parties to the application, and may stay proceedings or any part of the proceedings thereon until further notice from the Commissioners.

Inquiries under this Act and the Act of 1854.

Consent Cases.

17. In all cases the parties may by consent in writing dispense with the formal proceedings hereinafter mentioned, or some portion of them, and orders by consent may be drawn up, and, if approved of by the Commissioners, may be sealed with their seal.

Parties dispensing with formal proceedings.

Writ of Summons.

18. Unless the parties so consent, and unless the applicant shall have received notice of the suspension of proceedings within the said period of five days, he may at the expiration of that period apply to the registrar to the Commissioners for an appointment when his application may be heard by them, and the registrar shall thereupon give to him an appointment in writing stating the day and hour when the same may be heard by the Commissioners, and the same shall, if practicable, then be heard, and the facts stated in the application be proved by affidavit or otherwise, and thereupon the Commissioners shall grant or refuse leave to issue a writ of summons in the terms or to the effect of the application, and the granting or refusal thereof shall be endorsed on the application.

Hearing of application for leave to issue.

19. If leave to issue a writ of summons be granted the applicant or his attorney shall prepare the same according to Form No. 3 in the said schedule, and the same shall be endorsed with the name and residence and addition of the applicant, and, if there be an attorney, the name and address of such attorney, and if he be an agent for another attorney in the matter, then also the name and address of such other attorney. It shall also be subscribed with a memorandum

Issuing.

that the defendants shall put in an answer to the application within ten days from the service of the said writ. The writ of summons and a copy or copies thereof, and a copy of the application for the purpose of service thereof, as hereinafter mentioned, shall be sealed by the registrar.

Service.

20. A copy of the writ of summons so issued and sealed, together with a copy of the application so sealed as aforesaid, shall be served by leaving the same with the secretary or other chief clerk of the defendants at their principal office in any part of the United Kingdom, or if service cannot thus be effected, then in such manner as the Commissioners may direct.

Endorsement of service.

21. The person serving the writ of summons and application shall forthwith endorse on the writ the day of the month of the service, and an affidavit of service of such writ and application, stating the day on which service was made, shall thereupon be left with the registrar to the Commissioners at their office.

Time for Appearance and showing cause.

How stated in writ of summons.

22. The writ of summons shall require the defendants to appear before the Commissioners at the place therein mentioned in twenty days from the service thereof, to show cause against the said application, but the Commissioners may enlarge the time for appearance and showing cause.

Answer.

Time for delivery and form of.

23. Within ten days from the service of the writ of summons, or within such further or extended time as may be fixed by any special order of the Commissioners, the defendants shall deliver to the applicant or to his attorney a printed or written or partly printed and partly written statement containing in a clear and concise form their answer to the application, and shall also leave four copies thereof with the registrar to the Commissioners at their office, together with any documents that may be useful in explaining or supporting it, and the registrar shall give a receipt for the same. The answer may admit the whole or any part of the facts stated in the application. It shall be divided into paragraphs, which shall be numbered consecutively, and it shall be sealed with the seal of the company, and signed by the person actually making the same, and who is acquainted with the facts stated therein.

It shall be endorsed with the name and address of the defendants, and if there be an attorney acting for them in the matter, with the name and address of such attorney, and if he be an agent for another attorney in the matter, then also with the name and address of such other attorney. It shall be in form No. 4 in the said schedule, or to the like effect.

24. The Commissioners may at any time require the whole or any part of the answer to be verified by affidavit upon giving a notice to that effect to the defendants, and if such notice be not complied with the answer may be set aside, or such part of it as is not verified according to the notice may be struck out.

Verification of.

Reply.

- 25. Within four days from the delivery of the answer to the applicant, or within such further or extended time as may be fixed by any special order of the Commissioners, he shall deliver a reply thereto to the defendants, and four copies thereof to the registrar to the Commissioners, and may object to the said answer as being insufficient, stating the grounds of such objection or deny the facts stated therein, or may admit the whole or any part of such facts. The reply shall be signed by the applicant, and be according to form No. 5 in the said schedule or to the like effect.

Time for delivery and form of.

Power to direct and settle Issues.

26. If it appear to the Commissioners at any time that the statements in the application or answer or reply do not sufficiently raise or disclose the issues of fact in dispute between the parties, they may direct them to prepare issues, and such issues shall, if the parties differ, be settled by the Commissioners.

Commissioners may direct issues.

Preliminary Questions of Law.

27. If it appear to the Commissioners at any time that there is a question of law which it would be convenient to have decided before further proceeding with the case, they may direct such question to be raised for their opinion either by special case or in such other manner as the Commissioners may deem expedient, and all such further proceedings as the decision of the question of law may render unnecessary may thereupon be stayed.

Power of Commissioners to raise and decide.

Preliminary Meeting.

Commissioners
may hold at
any time before
hearing.

28. If it appear to the Commissioners at any time before the hearing of the application that it will be to the advantage of the parties to hold a preliminary meeting, for the purpose of fixing or altering the place of hearing, determining the mode of conducting the inquiry, the admitting of certain facts or the proof of them by affidavit, or for any other purpose, they shall have power to hold such meeting upon giving notice thereof to the parties, and may thereupon make such order as shall seem to them fit under the circumstances.

Preliminary Communication with the Parties.

Commissioners
may commu-
nicate with
parties.

29. The Commissioners may, if they think fit, instead of holding such meeting as in the 28th General Order mentioned, communicate with the parties in writing, and may require answers to such inquiries as they may think fit to make.

Production and Inspection of Documents.

Documents
referred to in
statements.

30. Either party shall be entitled at any time before or at the hearing of the case to give a notice in writing to the other party in whose application or answer or reply reference is made to any document to produce it for the inspection of the party giving such notice, or of his attorney, and to permit him to take copies thereof, and any party not complying with such notice shall not afterwards be at liberty to put any such document in evidence on his behalf in such proceeding unless he satisfy the Commissioners that he had sufficient cause for not complying with such notice.

Notice to produce.

How to be
given.

31. Either party may give to the other a notice in writing to produce such documents as relate to any matters in difference (specifying the said documents), and which are in the possession or control of such other party, and if such notice be not complied with, secondary evidence of the contents of the said documents may be given by or on behalf of the party who gave such notice.

Notice to admit.

How to be
given and
effect of.

32. Either party may give to the other party a notice in writing to admit any documents saving all just exceptions,

and in case of neglect or refusal to admit after such notice, the costs of proving such documents shall be paid by the party so neglecting or refusing, whatever the result of the application may be, unless at the hearing the Commissioners certify that the refusal to admit was reasonable, and no costs of proving any document shall be allowed unless such notice be given, except where the omission to give the notice is in the opinion of the taxing master a saving of expense.

Witnesses.

33. The attendance of witnesses with or without documents shall be enforced in the same manner as it is now enforced in a superior court of law, and the proceedings for that purpose shall be in the same form, *mutatis mutandis*, and they shall be sealed by the registrar to the Commissioners with their seal, and may be served in any part of the United Kingdom. The witnesses shall be entitled to the same protection as when subpoenaed or cited to attend a superior court of law, and the laws and practice now in force relating to witnesses in a superior court of law shall apply to them in proceedings before the Commissioners.

Attendance
how enforced
and rules ap-
plicable to.

The Hearing.

34. If the applicant does not appear at the time and place appointed for the hearing, the Commissioners may dismiss the application, and if the defendants do not appear at such time and place and the Commissioners are satisfied that the summons was duly served, they may hear and determine the application *ex parte*, and if at any adjournment of the hearing the parties or either of them do not appear, the Commissioners may decide the case in their absence.

Power of Com-
missioners to
proceed *ex*
parte.

Evidence at the Hearing.

35. In the absence of any agreement between the parties the witnesses at the hearing shall be examined *viva voce*, but the Commissioners may at any time for sufficient reason order that any particular facts may be proved by affidavit, or that the affidavit of any witness may be read at the hearing on such conditions as they may think reasonable, or that any witness, whose attendance ought for some sufficient cause to be dispensed with, be examined by interrogatories, or otherwise, before a person to be appointed by them for that purpose,

To be *viva voce*
except in cer-
tain cases.

provided that when it appears to the Commissioners that the other party *bonâ fide* desires the production of a witness for cross-examination and that such witness can be produced, an order shall not be made authorizing the evidence of such witness to be given by affidavit.

Depositions taken before an Assistant Commissioner or other person authorized to take them may be read at the hearing without calling the deponents unless the Commissioners otherwise order.

Commissioners
may require
further evi-
dence.

36. The Commissioners may require further evidence to be given either *vivâ voce*, or by affidavit, or by deposition taken before an Assistant Commissioner or other person appointed by them for that purpose.

Hearing to
proceed from
day to day.

37. The hearing of the case when once commenced shall proceed, so far as in the judgment of the Commissioners may be practicable, from day to day.

Judgment of Commissioners.

Form of.

38. After hearing the case the Commissioners may dismiss the application, or make an order thereon in favour of the defendants, or reserve their decision, or (subject to the right of appeal in this Act mentioned) make such other order upon the application as may be warranted by the evidence, and may seem to them just.

May be in
writing and
sent or de-
livered to the
parties.

39. The Commissioners may give their decision in writing, signed by them, and it may be sent or delivered to the respective parties, and it shall not be necessary to hold a court merely for the purpose of giving such decision.

Costs.

How taxed and
recovered.

40. Costs shall be taxed upon the order of the Commissioners by which they are payable, and when taxed may be recovered by making such order a rule of any superior court in the ordinary way, and issuing execution upon such rule, or may be recovered in any other manner according to the practice of the said court.

Alteration or rescinding of Orders.

When appli-
cation for, to
be made.

41. Any application to the Commissioners to review and rescind or vary any decision or order previously made by them must be made within 28 days after the said decision or

order shall have been communicated to the parties unless the Commissioners think fit to enlarge the time for making such application.

Appeal.

42. If either party desire to appeal to a superior court from the decision of the Commissioners upon any question which, in the opinion of the Commissioners, is a question of law, he shall give notice thereof to the other party and to the registrar within 14 days from the time when the decision was communicated to the parties, and shall therein state what the question of law is and express his intention to apply to the Commissioners on a certain day to be therein named (not exceeding 14 days from the date of the notice) to state a case in writing for the opinion of a superior court, to be determined by the Commissioners upon such security being given as they may direct. To a superior court.

43. If either party desire a re-hearing by all the Commissioners of any decision or order made by any one or two of their number, he shall give notice thereof to the other party and to the registrar within 14 days from the time when the decision or order was communicated to the parties, and shall therein express his desire to have the same re-heard wholly or in part, and his intention to apply to the Commissioners on a certain day to be therein named (not exceeding 14 days from the date of the notice) to re-hear the same, specifying the questions upon which he requires such re-hearing. To all the Commissioners from one or two of them.

Interlocutory Applications.

44. Interlocutory applications may be heard by the Commissioners upon summons duly served on the person called upon to answer the application, and may be determined in a summary way. Evidence in such cases may be given by affidavit, but the Commissioners may order the attendance for cross-examination of the person making any such affidavit. How heard.

Affidavits.

45. Affidavits shall be confined to such facts as the witness is able of his own knowledge to prove, except on interlocutory motions, on which statements as to his belief with the grounds thereof may be admitted. The cost of every affidavit which shall unnecessarily set forth matters of hearsay or argumenta- How framed.

tive matter or copies of or extracts from documents shall be paid by the party using or filing the same.

Filing of affidavits, &c. and giving office copies.

46. Affidavits left with the registrar or used before the Commissioners shall be filed in their office, and applications, answers, and replies, together with documents left therewith at the said office, shall also be there filed, and office copies of the same shall be given by the registrar upon request of the parties.

Computation of Time.

How computed.

47. In all cases in which any particular number of days, not expressed to be clear days, is prescribed by this Act or by these orders, the same shall be reckoned exclusively of the first day and inclusively of the last day, unless the last day shall happen to fall on a Sunday, Christmas Day, or Good Friday, or a day appointed for a public fast or thanksgiving, in which case the time shall be reckoned exclusively of that day also.

What days to be excluded.

48. The days between Thursday next before and the Wednesday next after Easter Day and Christmas Day, and the three following days, shall not be reckoned or included in any proceedings under this Act.

Registrar's Office when Open.

The hours and days when open.

49. The registrar's office shall be open from ten o'clock in the forenoon till five o'clock in the afternoon daily, except between the 10th day of August and the 1st day of October in any year after the year 1873, when it is to be open from eleven in the forenoon till two in the afternoon, and except on Good Friday, Easter Eve, Monday and Tuesday in Easter Week, Christmas Day, and the three following days, the Queen's birthday, and Whit Monday and Whit Tuesday, when the office shall be closed.

Adjournment.

Power of Commissioners to adjourn.

50. The Commissioners may from time to time adjourn any proceedings before them.

Amendment.

Power of Commissioners to amend.

51. The Commissioners may at any stage of the proceedings allow them to be amended, or may order to be struck out any matters which may tend to prejudice, embarrass, or delay the

fair hearing of the case, and all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties.

Formal Objections.

52. No proceedings under this Act shall be defeated by any formal objection. Not to prevail.

Commissioners acting separately.

53. The Commissioners may exercise their jurisdiction by any one or two of their number in cases under ss. 8, 9, and 19 of this Act, and on the hearing of applications for leave to issue a summons, and on all interlocutory applications. In what cases.

Practice of Superior Courts of Law, when applicable.

54. In any case not expressly provided for by this Act or by these orders, the general principles of practice in the superior courts of law may be adopted and applied at the discretion of the Commissioners to proceedings before them. Discretion of Commissioners in cases not expressly provided for.

Table of Fees.

55. The fees, a table whereof is in the schedule hereunto annexed, may be demanded and taken in respect of the proceedings before the Commissioners. What fees may be taken.

FREDERICK PEEL.
H. T. J. MACNAMARA.
W. P. PRICE.

August 29, 1873.

Approved,
SELBORNE, C.

SCHEDULE.

I.—FORMS.

No. 1. Application.	No. 4. Answer.
„ 2. Receipt of Registrar for Application.	„ 5. Reply.
„ 3. Writ of Summons.	„ 6. Warrant of Commit- ment for Contempt.

The forms of proceedings contained in this schedule may be used in the cases to which they are applicable, with such alterations as the circumstances of the case may render necessary, but any variance therefrom, not being in matter of substance, shall not affect their validity or regularity.

No. 1. *Application.*

The Regulation of Railways Act, 1873.

In the matter of the application of <i>A. B.</i>	} <i>A. B.</i> states that
against	
The Company.	
	1.
	2.

[As to the general form of application, see General Order No. 2.]

[As to the special forms of application under the several sections of the Act, see General Orders, Nos. 3-12.]

And the said *A. B.* applies to the Railway Commissioners under the above-mentioned Act for a Summons calling upon the said company to show cause why [here state concisely the nature of the application, as, for example, thus] a Writ of injunction should not issue against them pursuant to the said Act enjoining them to desist from giving any undue preference to themselves or other persons in the carrying or in the collecting, carrying, and delivering, for themselves or other persons, of goods and parcels, or in their charges for the same over the said *A. B.* in the carrying of such goods and parcels for him, and enjoining the said company not to subject him to any undue prejudice in respect thereof.

Dated this day of 187 .
Signed, *A. B.*

[*Indorsement.*]

This Application is made by *A. B.* of (stating
address and occupation, and if there be an attorney in the

No. 2. Receipt by Registrar of Application.

In the matter of the application of A. B. against The Company. } Received on the day of 187 , at the office of the Railway Commissioners an application by A. B. against the Company purporting to be signed by (insert the name of applicant and if documents be left with the application), and also the following documents, that is to say (enumerating them).

C. D., Registrar.

The Regulation of Railways Act, 1873.

In the matter of the application of *A. B.* against The Company. } To the Company. Upon the application of *A. B.* We, the Railway Commissioners, command you, that in twenty days from the service of this Writ upon you, you appear at at o'clock in the forenoon, and then and there show cause why (following the terms of the application), and take notice that in default of your so doing the Commissioners may hear and determine the said application *ex parte*.

Dated this day of 187 .

(Sealed.)

Memorandum.—The said company are within ten days from the service of this Writ to put in their answer to the Application pursuant to the General Orders made under the Regulation of Railways Act, 1873.

[Indorsement.]

This Writ is issued by A. B. of _____ (and if there be an attorney) by C. D. of _____ (and if sued out as agent for the attorney) as agent for E. F. of _____ attorney for the said A. B.

No. 4. *Answer.*

The Regulation of Railways Act, 1873.

In the matter of the application of A. B. against The Company.	}	The Company in answer to the application of A. B. state that,—
		1. 2.

Dated this day of 187 .

Scaled,
Signed,

[*Indorsement.*]

This answer is made on behalf of the said Company by *C. D.*
of , who is acquainted with the facts stated therein.
The attorney for the said Company is *E. F.* of .

No. 5. *Reply.*

The Regulation of Railways Act, 1873.

In the matter of the application of A. B. against The Company.	}	The said A. B., in reply to the answer of the said Company states that,—
		1. 2.

And the said A. B. admits that
Dated this day of 187 .
Signed,

No. 6. *Warrant of Commitment for Contempt.*

The Regulation of Railways Act, 1873.

In the matter of the application of A. B. against The Company.	}	Upon the hearing of this application on the day of 187 , at before the Railway Com- missioners (or <i>C. D.</i> one of the Rail- way Commissioners) sitting in open court pursuant to the above-mentioned Act.

Whereas A. B. has this day been guilty, and is by the said
Commissioners (or the said *C. D.* being such Commissioner as
aforesaid) adjudged to be guilty of contempt of them (or him)

sitting in open court as aforesaid. The said Commissioners do (or the said *C. D.* does) thereupon sentence the said *A. B.* for his said contempt to be imprisoned in the Gaol for , and to pay to our Lady the Queen a fine of £ , and to be further imprisoned in the said Gaol until the said fine be paid. And the Commissioners further order (or the said *C. D.* further orders) that the Sheriff of the said County [or as the case may be], and all constables and officers of the peace of any county or place where the said *A. B.* may be found, shall take the said *A. B.* into custody and convey him to the said Gaol, and there deliver him into the custody of the Gaoler thereof to undergo his said sentence. And the Commissioners further order (or the said *C. D.* further orders), the said gaoler to receive the said *A. B.* into his custody, and that he shall be detained in the said gaol in pursuance of the said sentence.

Signed this day of , 187 .

Approved,
SELBORNE, C.

FREDERICK PEEL.
H. T. J. MACNAMARA.
W. P. PRICE.

SCHEDULE.

II.—TABLE OF FEES.

Appointed by the Commissioners with the concurrence of the Treasury to be taken in relation to the proceedings before the Commissioners.

	£	s.	d.
Receiving and filing every application and answer respectively	1	0	0
Receiving and filing every reply, affidavit, or other proceeding	0	2	6
<i>Note.</i> —No extra charge is to be made for documents that may accompany any application, answer, or reply, or any affidavit.			
Every appointment for hearing	0	2	6
Writ of summons	0	5	0

154 NOTICE UNDER PUBLIC OFFICES FEES ACT, 1866.

	£	s.	d.
Every summons upon interlocutory proceedings	0	5	0
Every order made thereon	0	2	6
Attendance by counsel on interlocutory proceedings, each side	0	10	0
Every order for attendance of witnesses made at request of the parties or either of them	0	2	6
Every subpoena	0	2	6
Every commission to take evidence	1	0	0
Every hearing not in the nature of an interlocutory proceeding or of an arbitration	1	0	0
Every special case	0	10	0
If settled by the Commissioners	3	3	0
Every hearing in the nature of an arbitration under Ss. 8, 9, and 19 of the Regulation of Railways Act, 1873.			
Each day or part of a day	15	15	0

In all cases, whether in the nature of an arbitration or otherwise, if there be an assessor his charge is to be added to the hearing fee.

Note.—The fee for the hearing in the nature of an arbitration and the assessor's charge is to be paid on each day by the party whose case is then being heard, unless the Commissioners otherwise order.

For every decision in the nature of an award under Ss. 8, 9, and 19 of the said Act	5	5	0
Office copies of proceedings, per folio	0	0	6

Note.—Copies of plans, sections, &c. to be paid for by the party requiring them according to the actual cost.

NOTICE UNDER THE "PUBLIC OFFICES FEES ACT, 1866," AS TO PAYMENT OF FEES BY STAMPS.

The Lords Commissioners of Her Majesty's Treasury, in pursuance of the provisions of the said Act, hereby declare and direct that from and after the 15th day of October, 1873, the

fees payable in the office of the Railway Commissioners or to the officers thereof shall be collected by means of stamps. And in pursuance of the provisions aforesaid they further declare and direct that Impressed Stamps only shall be used, and that such stamps shall be impressed on a fee paper where the fee is payable for:—

Receiving and filing every application and answer respectively:

Receiving and filing every reply, affidavit, or other proceeding:

Every appointment for hearing:

Attendance by counsel or interlocutory proceedings:

Every hearing not in the nature of an interlocutory proceeding or of an arbitration:

Every hearing in the nature of an arbitration under sections 8, 9, 19 of the Regulation of Railways Act, 1873, each day or part of a day:

For every decision in the nature of an award under sections 8, 9, 19 of the said Act.

In all other cases in pursuance of the provisions of the said Act, the stamp will be impressed on the document in respect of which the fee is payable.

The Railway Commissioners or their Registrar may in any case in which through mistake, the stamp upon a fee paper or document has not been legitimately used, certify thereon that such stamp is a fit subject for allowance; and it shall be competent to the Commissioners of Inland Revenue upon the production of the stamp with such certificate to allow the amount thereof.

The Railway Commissioners, or their Registrar, shall on or before the 30th day of April in each year make out an account of all stamps used in their office and shall render such account to the Lords Commissioners of Her Majesty's Treasury; and the first of such accounts shall be for the period ended 31st March, 1874, and the second and subsequent accounts for each year thereafter ended 31st March.

The Commissioners of Inland Revenue may authorize distributors of stamps and other persons to sell the stamps above referred to.

III. FORM OF CERTIFICATE OF BOARD OF TRADE (SCHEDULE II.
OF "RAILWAYS CONSTRUCTION FACILITIES ACT, 1864").

Certificate of the Board of Trade for the construction of a railway.

Whereas the promoters of the Railway have contracted for the purchase of the lands required for the railway and the works connected therewith, and have complied with the requirements of "The Railways Construction Facilities Act, 1864."

Now therefore the Board of Trade do by this their certificate, in pursuance of the said Act, and by virtue and in exercise of the powers thereby in them vested, and of every other power enabling them in this behalf, certify as follows:

(Here are to follow the provisions of the certificate showing the powers conferred and the terms and conditions (if any) imposed.)

(Signed) C. D.,

Secretary to the Board of Trade.

The Board of Trade, Whitehall,

Dated this day of

IV. 1 & 2 VICT. CAP. XCVIII.

An Act to provide for the Conveyance of the Mails by Railways. [14th August, 1838.]

WHEREAS it is expedient that provision should be made by law for the conveyance of the mails by railways at a reasonable rate of charge to the public: Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, that in all cases of railways already made or in progress or to be hereafter made within the united kingdom, by which passengers or goods shall be conveyed in or upon carriages drawn or impelled by the power of steam, or by any locomotive or stationary engines, or animal or other power whatever, it shall be lawful for the postmaster general,

Postmaster
general may
require rail-
way companies
to convey the
mails.

by notice in writing under his hand delivered to the company of proprietors of any such railway, to require that the mails or post letter bags shall from and after the day to be named in any such notice (being not less than twenty-eight days from the delivery thereof) be conveyed and forwarded by such company on their railway, either by the ordinary trains of carriages, or by special trains, as need may be, at such hours or times in the day or night as the postmaster general shall direct, together with the guards appointed and employed by the postmaster general in charge thereof, and any other officers of the post office; and thereupon the said company shall, from and after the day to be named in such notice, at their own cost, provide sufficient carriages and engines on such railways for the conveyance of such mails and post letter bags to the satisfaction of the postmaster general, and receive, take up, carry, and convey, by such ordinary or special trains of carriages or otherwise, as need may be, all such mails or post letter bags as shall for that purpose be tendered to them, or any of their officers, servants, or agents, by any officer of the post office, and also receive, take up, carry, and convey, in and upon the carriages carrying such mails or post letter bags, the guards in charge thereof, and any other officers of the post office, and shall receive, take up, deliver, and leave such mails or post letter bags, guards, and officers at such places in the line of such railway, on such days, at such hours or times in the day or night, and subject to all such reasonable regulations and restrictions as to speed of travelling, places, times, and duration of stoppages, and times of arrival, as the postmaster general shall in that behalf from time to time order or direct; provided always, that the rate of speed to be required shall in no case exceed the maximum rate of speed prescribed by the directors of such railway or railways for the conveyance of passengers by their first-class trains; but that no alteration in the rate of speed of any train by which the mails shall be conveyed shall be made until six calendar months previous notice shall be given to the postmaster general of any such intended alteration.

II. And be it enacted, that it shall be lawful for the postmaster general (if he shall see fit) to require that the whole of the inside of any carriage used on any railway for the conveyance of mails or post letter bags shall be exclusively appropriated for the purpose of carrying the mails.

If required, carriage to be applied exclusively to such conveyance.

Railway company, if required, to provide separate carriage for sorting letters.

III. And be it enacted, that the company of proprietors of any such railway shall, on being required so to do by the postmaster general, provide and furnish (in addition to the carriages aforesaid) a separate carriage or separate carriages, fitted up as the postmaster general, or such person as he shall nominate in that behalf, shall direct, for the purpose of sorting letters therein, and shall forward the same carriage or carriages by their railway, at such hours or times, and subject to all such reasonable regulations as aforesaid, as the postmaster general shall in that behalf order or direct; and such company of proprietors shall receive, take up, carry, and convey in any such last-mentioned carriage or carriages all such post letter bags and officers of the post office as the postmaster general shall reasonably require, and shall deliver and leave any post letter bags and officers of the post office at such places on the line of the railway as the postmaster general shall in that behalf from time to time reasonably order and direct.

Postmaster general may direct mails to be carried on railway in mail coaches in lieu of company's carriages.

IV. And be it enacted, that in case the postmaster general shall at any time be desirous of sending by any such railway any of Her Majesty's mail coaches or mail carts, with the mails or post letter bags and guards thereof, and carriages for sorting letters, with any officers of the post office therein, instead of sending the said mails or post letter bags, guards, and officers of the post office by carriages to be provided by such railway company as aforesaid, then and in any such case such railway company shall, at the request of the postmaster general, signified by such notice as aforesaid, cause such mail coaches or mail carts, with the mails or post letter bags and guards thereof, and carriages for sorting letters, with any officers of the post office therein, to be conveyed by the usual or proper trucks or frames on their said railway, subject to such regulations and restrictions of the postmaster general as herein-before mentioned.

Railway companies to be subject to directions of post-office respecting conveyance of mails.

V. And be it enacted, that for the greater security of the mails or post letter bags so to be carried or conveyed by railways the company of proprietors of such respective railways along which such mails or post letter bags, mail coaches, or carts and carriages for sorting letters shall be so required by the postmaster general to be conveyed, and their respective officers, servants, and agents, shall obey, observe, and perform all such reasonable regulations respecting the conveyance, delivering, and leaving of such mails and post letter bags,

guards, and officers of the post office, mail coaches, or carts and carriages, on any such railways, or on the line thereof, as the postmaster general, or such officer of the post office as he shall nominate in that behalf, shall in his discretion from time to time give or make: provided always, that it shall not be lawful for any officer or servant of the post office to interfere with or give orders to the engineer or other person having the charge of any engine upon any railway along which mails or post letter bags shall be conveyed; but if any cause of complaint shall arise the same shall be stated to the conductor or other officer of the railway company having charge of the train, or to the chief officer at any station upon the railway; and in case of any default or neglect on the part of any officers or servants of the railway company to comply with any of the regulations of the postmaster general or other officer of the post office so to be nominated as aforesaid, the railway company shall be wholly responsible for the same.

VI. And be it enacted, that every company of proprietors of any railway along which such mails or post letter bags, mail coaches, carts, or carriages shall be so required by the postmaster general to be conveyed, shall be entitled to such reasonable remuneration to be paid by the postmaster general to any such company of proprietors for the conveyance of such mails, post letter bags, mail guards, and other officers of the post office, mail coaches, carts, and carriages, in manner required by such postmaster general, or by such officer of the post office as he shall in that behalf nominate as aforesaid, as shall (either prior to or after the commencement of such service) be fixed and agreed on between the postmaster general and such company of proprietors, or in case of difference of opinion between them then as shall be determined by arbitration as hereinafter provided, but so that the services which may be required by the postmaster general, or by such officer of the post office as he in that behalf shall nominate as aforesaid, to be performed by any such company of proprietors, be not suspended, postponed, or deferred by reason of such remuneration not having been then fixed or agreed on between the said postmaster general and such company of proprietors, or by reason of the award on any reference to arbitration to determine the remuneration not having been then made.

Remuneration
to railway com-
panies for con-
veyance of
mails.

VII. And be it enacted, that notwithstanding any agreement

Agreements

between postmaster general and railway companies as to amount of remuneration, &c., may be altered.

entered into between the postmaster general and any such company, or any award to be made on any such reference as aforesaid, fixing the amount of remuneration to be paid to such company for any services to be rendered by them as aforesaid, it shall be lawful and competent to and for the postmaster general, by notice in writing, to require, from and after the day to be named in any such notice, not being less than twenty-eight days from the delivery thereof, any addition to be made to the services in respect of which such agreement shall be entered into or award made; and in any such case, and also in case of a discontinuance of any part of such services as hereinafter provided, a fresh agreement shall be entered into between the postmaster general and such company, regulating the future amount of remuneration to be paid by the postmaster general to such company for such increased or diminished services, as the case may be; or if the parties cannot agree on such amount the same shall be referred to arbitration in like manner as hereinbefore is mentioned and hereinafter provided as to any original agreement; and such arbitrators shall have power to award any compensation they may consider reasonable to be paid to any railway company for any loss that may have been occasioned to them by the discontinuance or alteration of the services previously agreed to be performed by them by any train or carriage specially required by the postmaster general to be forwarded for the conveyance of the mails, but so that nevertheless such increased or diminished services shall not be suspended, postponed, or deferred by reason of the amount of such increased or diminished remuneration not having been then fixed or agreed on between the postmaster general and such company of proprietors, or by reason of the award on any reference to arbitration to determine the amount of such increased or diminished remuneration not having been then made.

Postmaster general may terminate services of railway companies on notice;

VIII. And be it enacted, that it shall be lawful for the postmaster general and he is hereby authorized, at any time during the continuance of the services of any company of proprietors as aforesaid, to give to such company, by writing under his hand, six calendar months previous notice that such services or any part thereof shall cease and determine; and thereupon, at the expiration of such six calendar months notice, the said services, or such part thereof as aforesaid,

and the remuneration for the same, shall cease and determine.

IX. And be it enacted, that it shall be lawful for the Postmaster-General at any time during the continuance of the services of any company of proprietors as aforesaid, by notice in writing under his hand, absolutely to determine and put an end to the same or any part thereof, without giving any previous notice, or on giving any notice less than six calendar months in respect thereof, and thereupon the said services shall cease and determine accordingly: provided nevertheless, that in case the Postmaster-General shall, without giving six calendar months' notice as aforesaid, at any time determine the services to be required by the Postmaster-General of any company of proprietors, or any part of such services, without any cause whatever, or for any cause other than the default by such company of proprietors in the performance of any of the services to be required of them by the Postmaster-General, or the breach by such company of proprietors of any of their engagements with the Postmaster-General, then and in any such case the Postmaster-General shall make to such company a full and fair compensation for all loss thereby occasioned; the amount whereof in case the parties differ about the same shall be ascertained by arbitration as hereinafter mentioned.

or may terminate services of railway companies without notice, subject to certain conditions.

X. And be it enacted, that on all carriages to be provided for the service of the Post Office on any such railway there shall on the outside be painted the royal arms, in lieu of the name of the owner and of the number of the carriage, and of all other requisites, if any, prescribed by law in respect of carriages passing on any such railway; but the want of such royal arms on any carriage belonging to or used by the Post Office shall not form an objection to such carriage running on any railway, anything to the contrary notwithstanding.

Royal arms to be painted on engines or carriages provided for the service of the Post Office.

XI. And be it enacted, that it shall not be competent or lawful to or for the company of proprietors of any railway to make any bye-laws, orders, rules, or regulations which shall militate against or be contrary or repugnant to any of the enactments herein contained; and that if any company of proprietors shall make or shall have made any such bye-laws, orders, rules, or regulations, either prior or subsequently to the Postmaster-General signifying to the said company his intention that the mails or post letter bags, mail coaches, carts, or carriages shall be conveyed by such railway, all such

Bye-laws of railway companies not to be repugnant to provisions of Act.

bye-laws, orders, rules, and regulations, so far as they shall militate against or be contrary or repugnant to any of the enactments herein contained, shall be and be deemed absolutely void and of no effect, in like manner as if such bye-laws, orders, rules, or regulations had never been made or passed, anything to the contrary in anywise notwithstanding.

Penalty for
refusing or
neglecting to
convey mails.

XII. And be it enacted, that if the company of proprietors of any railway, or any of their respective officers, servants, or agents, shall refuse or neglect to carry or convey any mails or post letter bags, when tendered to them for such purpose by the Postmaster-General or any officer of the Post Office, or shall refuse to carry on their railway any mail coaches, carts, or carriages as hereinbefore provided, when so required by the Postmaster-General, or shall refuse or neglect to receive, take up, deliver, and leave any such mails or post letter bags, mail guards, or other officers of the Post Office, mail coaches, carts, or carriages, at such places, at such times, on such days, and subject to such regulations and restrictions as to speed of travelling, places, times, and duration of stoppages, as the Postmaster-General shall from time to time reasonably direct or appoint, as hereinbefore provided, or shall not obey, observe, and perform all such regulations respecting the conveyance of the mails and post letter bags, mail coaches, carts, and carriages on any such railways as the Postmaster-General, or such officer of the Post Office as he shall nominate in that behalf shall make for the purposes aforesaid, then and in any such case the company of proprietors who, or whose officer, servant, or agent, shall so offend in the premises, shall for every such offence forfeit and pay a sum not exceeding twenty pounds; provided nevertheless, that the payment of or liability to such penalty shall not in any manner lessen or affect the liability of any such company under any bond which may have been given by them under the provisions hereinafter contained.

Postmaster-
General may
require rail-
way companies
to give security
by bond.

XIII. And be it enacted, that it shall be lawful for the Postmaster-General, if he shall so think fit, to require the company of proprietors of any railway already made or in progress or to be hereafter made within the United Kingdom to give security by bond to Her Majesty, her heirs and successors, conditioned to be void if such company shall from time to time carry or convey, or cause to be carried or conveyed, all such mails or post letter bags, mail guards, and

other officers of the Post Office, mail coaches, carts, and carriages in manner hereinbefore mentioned, when thereunto required by the Postmaster-General, or any officer of the Post Office duly authorized for that purpose, and shall receive, take up, deliver, and leave all such mails or post letter bags, guards and officers, mail coaches, carts, and carriages, at such places, at such times, on such days, and subject to such regulations and restrictions as to speed of travelling, places, times, and duration of stoppages, as hereinbefore mentioned, and shall obey, observe, and perform all such regulations respecting the same as the Postmaster-General shall reasonably make, and shall well and truly do and perform, and cause to be done and performed, all such other acts, matters, and things as by this Act are required or directed to be done or performed by or on the part or behalf of such company, their officers, servants, and agents; and every such bond shall be taken in such sum and in such form as the Postmaster-General shall think proper; and every such security shall be renewed from time to time whenever and so often as such bond shall be forfeited, and also whenever and so often as the Postmaster-General shall in his discretion require the same to be renewed; and if any company of proprietors of any such railway as aforesaid shall, when so required as aforesaid, refuse or neglect, for the space of one calendar month next after the delivery of any notice for such purpose to them given by or from the Postmaster-General, to execute to Her Majesty, her heirs and successors, such bond to the effect and in manner aforesaid, or shall at any time refuse or neglect to renew such bond whenever and so often as the same shall by or in pursuance of this Act be required to be renewed, such company of proprietors shall forfeit one hundred pounds for every day during the period for which there shall be any refusal, neglect, or default to give or renew such security as aforesaid, after the expiration of the said one calendar month.

XIV. Provided always, and be it enacted, that in all cases in which any railway or part of a railway may previous to the passing of this Act have been demised or let by the company of proprietors thereof, the body corporate or company, or other persons to whom the same shall have been so demised or let, their successors, executors, administrators, or assigns, shall during the continuance of such lease be liable

Lessees of railway, not being a body corporate or company, not to be required to give security by bond above £1,000.

to all the provisions of this Act for or in respect of such railway or part of a railway, in lieu of such company of proprietors, but so that such lessees (not being a body corporate or company), their executors, administrators, or assigns, shall not be required in respect of any such railway or part of a railway to give security under the foregoing enactment to any amount in any one bond exceeding the sum of one thousand pounds, and shall not in any one year be liable in damages to be recovered upon any bonds which they may have given to any amount exceeding the sum of one thousand pounds and costs of suit.

Service of
notices.

XV. And be it enacted, that all notices under the provisions of this Act by or on behalf of the Postmaster-General to any company of proprietors of any railway as aforesaid shall be considered as duly served on any company of proprietors in case the same shall be given or delivered to any one or more of the directors of such company, or to the secretary or clerk of such company, or be left at any station belonging to such company.

For settling
differences
between
Postmaster-
General and
railway com-
panies in
certain cases.

XVI. And be it enacted, that in all cases in which the Postmaster-General and any company of proprietors of any railway shall not be able to agree on the amount of remuneration or compensation to be paid by the Postmaster-General to such company of proprietors for any services performed or to be performed by them as hereinbefore mentioned, the same shall be referred to the award of two persons, one to be named by the Postmaster-General, and the other by such company; and if such two persons cannot agree on the amount of such remuneration or compensation, then to the umpirage of some third person, to be appointed by such two first-named persons previously to their entering upon the inquiry; and the said award or umpirage, as the case may be, shall be binding and conclusive on the said parties, and their respective successors and assigns.

Railroad com-
panies, after
contracts have
existed for a
certain period,
may refer them
to arbitrators
to decide as
to their con-
tinuance.

XVII. And be it enacted, that after any contract entered into or award made under the authority of this Act shall have continued in operation for a period of three years, it shall be competent for any railway company who may consider themselves aggrieved by the terms of remuneration fixed by such contract or award, by notice under their common seal, to require that it shall be referred to arbitrators to determine whether any and what alteration ought to be made therein; and

thereupon such arbitrators or umpire to be appointed as hereinbefore mentioned shall proceed to inquire into the circumstances, and make their award therein, as in the case of an original agreement: Provided always, that the services performed by such railway company for the Post Office shall in nowise be interrupted or impeded thereby.

XVIII. And be it enacted, that in all references to be made under the authority of this Act the Postmaster-General, or the railway company, as the case may be, shall nominate his or their arbitrator within fourteen days after notice from the other party, or in default it shall be lawful for the arbitrator appointed by the party giving notice to name the other arbitrator; and such arbitrators shall proceed forthwith in the reference, and make their award therein within twenty-eight days after their appointment, or otherwise the matter shall be left to be determined by the umpire; and if such umpire shall refuse or neglect to proceed and make his award for the space of twenty-eight days after the matter shall have been referred to him, then a new umpire shall be appointed by the two first-named arbitrators, who shall in like manner proceed and make his award within twenty-eight days, or in default be superseded, and so *toties quoties*.

Nomination of arbitrators to be within a limited time after application for references made.

XIX. And be it enacted, that whenever the term "company of proprietors," or "railway company," or "company," is used in this Act, the same shall extend to and be construed to include the proprietors for the time being of any railway, whether a body corporate or individuals, and also (during the continuance of any demise or lease as aforesaid) any person, whether a body corporate or company or individuals, to whom any railway or part of a railway may previous to the passing of this Act have been demised or let, and their successors, executors, administrators, and assigns, unless the subject or context be otherwise repugnant to such construction; and that the provisions of this Act shall be construed according to the respective interpretations of the terms and expressions contained in an Act passed in the first year of the reign of Her present Majesty, intituled *An Act for consolidating the Laws relative to Offences against the Post Office of the United Kingdom, and for regulating the judicial Administration of the Post Office Laws, and for explaining certain terms and expressions employed in those laws*, so far as those interpretations are not repugnant to the subject or

Construction of terms.

1 Vict. c. 36.

inconsistent with the context of such provisions; and that this present Act shall be deemed and construed to be a Post Office Act within the intent and meaning of the said last-mentioned Act; and the pecuniary penalties hereby imposed shall be recovered and recoverable in the manner and form therein particularly mentioned and expressed with reference to the pecuniary penalties imposed by the Post Office Acts: Provided nevertheless, that any justice of the peace having jurisdiction for any county through which any railway shall pass, in respect of which any penalty or forfeiture under this Act shall have been incurred, shall and may hear and determine any offence against this Act which may subject any company to a pecuniary penalty not exceeding twenty pounds; and a summons issued under the Post Office Acts by any such justice against any railway company for the recovery of any such penalty shall be deemed to be sufficiently served in case either the summons or a copy thereof be delivered to any officer, servant, or agent of such company, or be left at any station belonging to such company.

Act may be amended or repealed.

XX. And be it enacted, that this Act may be amended or repealed by any Act to be passed in the present session of Parliament.

V.—7 & 8 VICT. C. LXXXV.

An Act to attach certain conditions to the Construction of future Railways authorized or to be authorized by any Act of the present or succeeding Sessions of Parliament; and for other purposes in relation to Railways.

[9th August, 1844.]

Railway companies to afford additional facilities for the transmission of the mails. 1 & 2 Vict. c. 98.

XI. And whereas by an Act passed in the second year of the reign of Her Majesty, intituled "An Act to provide for the Conveyance of the Mails by Railways," provision was made for the transmission of the mails by railway, and it is expedient that such provision should be extended; be it enacted that it shall be lawful for the Postmaster-General to require, in the manner and subject to the conditions as to payment for service performed prescribed by the said Act, that the mails be forwarded on any such railway as is hereinbefore last mentioned at any rate of speed which the inspector

general of railways for the time being shall certify to be safe, not exceeding twenty-seven miles in the hour, including stoppages; and it shall be also lawful for the Postmaster-General to send any mail guard with bags not exceeding the weight of luggage allowed to any other passenger (or subject to the general rules of the company for any excess of that weight) by any train other than a mail train upon the same conditions as any other passenger; provided that in such last-mentioned case nothing herein, or in the last recited Act, contained shall be construed to authorize the Postmaster-General to require the conversion of a regular mail train into an ordinary train, or to exercise any control over the company in respect of any ordinary train; nor shall the company be responsible for the safe custody of any mail bags so sent.

VI.—8 & 9 VICT. c. xxviii.

An Act to empower Canal Companies and the Commissioners of Navigable Rivers to vary their Tolls, Rates, and Charges on different parts of their Navigations.

[30th June, 1845.]

Whereas by divers Acts of Parliament various canal companies and the commissioners or trustees of several navigable rivers have been authorized and empowered to levy and receive certain tolls, rates, and charges for the use of their respective canals and navigations, which tolls, rates, and charges are for the most part required to be levied at one uniform rate per ton or per mile throughout the entire length of the said navigations and rivers respectively, without regard to any difference of circumstances which may exist in reference thereto. And whereas by an Act of Parliament passed in this present session, called "The Railways Clauses Consolidation Act, 1845," powers have been given to railway companies to vary the tolls, rates, and charges upon railways, so as to accommodate them to the circumstances of the traffic thereon. And whereas greater competition for the public advantage would be obtained if canal companies and the commissioners or trustees of navigable rivers which have already been or may hereafter be from time to time incorporated or established,

Canal companies authorized to vary their tolls or rates on different portions of their canals;

and also, from time to time, to reduce and again advance their tolls or rates.

or which are regulated under the authority of Parliament, were to have the like powers granted to them in respect of their several canals and navigations and other works connected therewith; but such beneficial purposes cannot be effected without the authority of Parliament. Be it therefore enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, that from and after the passing of this Act, and subject to the provisions and limitations herein contained, it shall be lawful for the company of proprietors of any canal, or for the undertakers, commissioners, or trustees of any navigation or navigable river, already or hereafter to be established or incorporated or which is regulated under the authority of Parliament, or for their respective lessees, committees, directors, or managers, or their superintendents, or other agents by them severally authorized, in such manner as may be required by their respective Acts of Incorporation or for regulating such canals or navigations, from time to time to alter or vary the tolls, rates, and duties granted to them, or by them respectively authorized to be levied and received for the use of their several canals or navigations, or any branches therefrom, or any railways or tramways connected therewith, and made under the authority of such canal or navigation Acts respectively, either upon the whole or upon or for any particular portion or portions of such canals, navigations, branches, railways, or tramways, according to local circumstances, or the quantity of traffic or otherwise, as they shall think fit, and also from time to time to lower or reduce, and again to raise or advance, such tolls, rates, and duties, and also any tolls or charges by them respectively authorized to be levied and received for any haulage, trackage, or other power supplied by them, either upon the whole or upon any particular portion or portions of their said several canals, navigations, branches, railways, and tramways, as to such companies, commissioners, trustees, or lessees, or their committees, directors, managers, or superintendents respectively, shall seem fit, any thing in the several Acts of incorporation, or for regulating any such canals or navigations, contained to the contrary notwithstanding. Provided always that in no case shall the tolls, rates, duties, and charges to be at any time levied or made by any such companies, commissioners,

trustees, or lessees, for the use of any such canals, navigations, branches, railways, or tramways, or for the supply of any such haulage, trackage, or other power, exceed the amount which they are by their said several Acts respectively authorized to levy or receive.

II. Provided always, and be it enacted, that all tolls, rates, and duties for the use of any such canals, navigations, branches, railways, or tramways shall be at all times charged equally to all persons, and after the same rate, whether per mile, or per ton per mile, or otherwise, in respect of all boats, barges, and other vessels of a like description passing along or using the same portion of the said canal, navigation, branches, railways, or tramways respectively, and upon all goods, animals, articles, and things of a like description, and conveyed or propelled in a like boat, barge, or other vessel passing along or using the same portion of the said canal, navigation, branches, railways, or tramways under the like circumstances; and that all tolls and charges for haulage or trackage or other power, to be supplied by any such company, commissioners, trustees, or lessees, shall be at all times charged equally to all persons, and after the same rate, whether per mile, or per ton per mile, or otherwise, in respect of all goods, animals, articles, and things of a like description, and conveyed in a like boat or vessel, drawn or propelled by a like power, and passing along or using the same portion of any such canal, navigation, branches, railways or tramways, under the like circumstances; and no reduction or advance in any tolls or charges for the use of any such canal, navigation, branches, railways, or tramways, or for the supply of any haulage, trackage, or other power by the said companies, commissioners, trustees, or lessees, shall be made, either directly or indirectly, in favour of or against any particular company or person passing along or using the same portion of such canal, navigation, branches, railways, or tramways.

Tolls to be charged equally to all persons under the like circumstances.

III. Provided always, and be it enacted, that this Act shall not apply to any canal or navigation the property wherein is vested in shareholders until a meeting of the shareholders thereof shall have been duly convened, in such manner as meetings are by their respective Acts of incorporation or settlement required to be called, or are usually called, and it shall have been determined, by a majority of

Act not to apply to existing companies until a meeting of shareholders have determined thereupon, nor in

other cases until approved by trustees or proprietors, and notices thereof duly published.

two-thirds of the votes of the shareholders in such meeting assembled, either in person or by proxy (where by such Acts of incorporation or settlement voting by proxy is allowed), to adopt the powers hereby granted, and where such navigations are vested in commissioners or trustees, without any body of shareholders or proprietors, until a special meeting of such commissioners or trustees shall have been duly convened in such manner as special meetings are by the respective Acts for regulating such navigations required to be called, or are usually called, and it shall have been determined by a majority of such commissioners or trustees in such meeting assembled to adopt the powers by this Act granted, or to any canal or navigation the property wherein is vested in one or more owner or owners, proprietor or proprietors, unless the owner or owners, proprietor or proprietors thereof shall determine to adopt the powers and provisions hereby granted, nor in either case until public notice of such determination and intention shall have been inserted in the "London Gazette" in respect of canals or navigations in England or Wales, in the "Edinburgh Gazette" in respect of canals or navigations in Scotland, and in the "Dublin Gazette" in respect of canals or navigation in Ireland, and in some newspaper circulating in the county or counties wherein such canal or navigation, or some part thereof, shall pass, one month at the least previously to the exercise of such powers, whereupon, or immediately after the expiration of such notice, every such company, and all such commissioners, trustees, or lessees, owners and proprietors, or their respective committees, directors, or managers, or their agents by them duly authorized in manner aforesaid, may from time to time put in force and exercise the said powers or any of them in the manner by this Act authorized.

Saving rights specifically reserved to canal companies and others by existing Acts of Parliament.

IV. Provided always, and be it enacted, that nothing in this Act contained shall be deemed or construed to deprive any canal or navigation company, or the commissioners, trustees, undertakers, or proprietors of any canal, river, or navigation, or the owners, lessees, or occupiers of any lands, collieries, quarries, or other hereditaments adjoining or near to any of such canals or navigations, or the overseers or surveyors of the roads of any parish, township, or hamlet through which any such canal or navigation may pass, of any powers, rights, privileges, exemptions, or advantages

specifically and expressly secured to them by any existing Act of Parliament: Provided also, that where by any canal or navigation Act or Acts now passed the tolls, rates, or duties (whether tolls per mile or tolls in gross) upon any description of goods, animals, articles, or things, or upon any boats, barges, or other vessels which shall be navigated, carried, or conveyed along any canal or navigation, or any portion thereof, and which shall pass into, out of, or along any such canal or navigation, or any portion thereof, from, into, or along any other canal or navigation, canals or navigations, adjoining or communicating therewith, or any portion thereof, or from or to the junction or junctions with any such adjoining or communicating canal or navigation, canals or navigations, are or shall be specially fixed, determined, or limited, either absolutely, or with reference to the tolls, rates, or duties to be levied or received from time to time on goods, animals, articles, or things, boats, barges, or other vessels passing into, out of, or along such canal or navigation, or any portion or portions thereof respectively, from, into, or along any other adjoining or communicating canal or navigation, canals or navigations, or from or to the junction or junctions with such other adjoining or communicating canal or navigation, canals or navigations; or where in any such Act or Acts any special enactment or provision shall have been inserted for securing a rateable reduction or advance of the respective tolls, rates, or duties to be levied or received from time to time on goods, animals, articles, or things, boats, barges, or other vessels, or on goods, animals, articles, or things of the same description, passing over, along, into, or from any canal or navigation, or several and distinct portions of any canal or navigation, into or along two or more adjoining or communicating canals or navigations, or from or to the respective junctions of two or more adjoining or communicating canals or navigations, no alteration or variation of the tolls, rates, and duties so specially fixed, determined, or limited, or any or either of them, other than such alterations or variations as are respectively authorized to be made under the several Acts for regulating such canals or navigations, shall be made under the authority of this Act without the previous consent in writing of the proprietors, trustees, undertakers, or commissioners of the canal or navigation, or of all the several canals or naviga-

tions, who are expressly mentioned in such special enactments or provisions, or of the committee, directors, or managers of the company, trustees, undertakers, or commissioners, or respective companies, trustees, undertakers, or commissioners of such canal or navigation, canals or navigations, which consents such companies, trustees, undertakers, and commissioners, or their respective committees, directors, or managers, are hereby authorized to give, either under their common seals respectively, or under the hand of their respective clerks or secretaries, although any such companies, trustees, or undertakers so consenting may not have adopted the other powers of this Act.

Canal companies subject to a limitation of profits not to raise their dues so as to exceed the maximum of profits.

V. Provided also, and be it enacted, that where in any canal or navigation Act there shall have been inserted any special provision, which shall be still in force and unrepealed, whereby the amount of the annual dividends, interest, or profits to be shared or divided amongst the proprietors or shareholders of such canal or navigation shall have been limited not to exceed a certain percentage or amount, and the maximum of such percentage or amount shall have been attained at the time of the passing of this Act, it shall not be lawful for the company of proprietors, trustees, or undertakers of any such canal or navigation to avail themselves of any of the powers of this Act for the purpose of raising or increasing the tonnage rates, tolls, or duties which on the first day of January immediately before the passing of this Act were charged or levied upon any boats, barges, or other vessels carried upon or passing along such canal or navigation, or any part thereof.

Nothing herein to exempt any canal, &c. from any general Act.

VI. And be it enacted, that nothing herein contained shall be construed to exempt any canal or navigation company who shall adopt the powers of this Act from the operation of any general Act regulating the manner of charging tolls and other charges upon canals and navigations in respect of passengers, goods, animals, articles, and things of a like description, which may be passed in the course of any future session of Parliament.

Act may be amended, &c.

VII. And be it enacted, that this Act may be amended or repealed by any Act to be passed in this present session of Parliament.

VII.—8 & 9 VICT. c. XLII.

An Act to enable Canal Companies to become Carriers of Goods upon their Canals. [21st July, 1845.]

Whereas by divers Acts of Parliament railway companies have been empowered to convey upon their railways all such goods, wares, merchandise, articles, matters, and things as may be offered to them for that purpose, and to make such reasonable charges for such conveyance as they may from time to time determine upon; and whereas greater competition for the public advantage would be obtained if similar powers were granted to canal and navigation companies which have from time to time been incorporated or established under the authority of Parliament; but such beneficial purpose cannot be effected without the authority of Parliament. Be it therefore enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, that from and after the passing of this Act it shall be lawful for the company of proprietors, trustees, or the undertakers of any canal, river, or navigation, or their respective committees, directors, or managers, or their superintendents or other agents by them duly authorized, to carry as common carriers for their own profit upon their respective canals, rivers, or navigations, or upon any railways or tramways belonging thereto, and constructed under the powers of their respective Acts of Parliament, or upon any other canals, rivers, or navigations communicating therewith, either directly or by means of any intermediate canal, river, or navigation, all such goods, wares, merchandise, articles, matters, and things as may be intrusted to them for that purpose, and for the better enabling them so to do to purchase, hire, and construct, and to use and employ, any number of boats, barges, vessels, rafts, carts, waggons, carriages, and other conveniences, and also to establish and furnish such haulage, trackage, or other means of drawing or propelling the same, either by steam, animal, or other power, or for the purpose of collecting, carrying, conveying, warehousing, and delivering such goods, wares, merchandise, articles, matters, and things as to any

Enabling canal companies to carry goods on their canals, or canals communicating therewith.

such company or undertakers shall seem fit, and to make such reasonable charges for such conveyance, warehousing, collection, and delivery as they may respectively from time to time determine upon, in addition to the several tolls or dues which any such company or undertakers are now authorized to take for the use of their said canals, navigations, or railways.

Company to be subject to the bye-laws of any other company upon whose canal they may act as carriers.

II. Provided always, and be it enacted, that any such company, commissioners, trustees, or undertakers using or employing any steam power for propelling by means of paddle wheels, boats, barges, vessels, or rafts, upon any canal, river, or navigation (other than their respective canals, rivers, and navigations), shall use and employ the same, subject to such bye-laws, rules, and regulations touching the construction, dimensions, power, rate of speed, and otherwise, of such boats, barges, vessels, or rafts, so propelled by steam as aforesaid, as the directors, commissioners, or undertakers of the canals, rivers, and navigations respectively on which such last-mentioned boats, barges, vessels, or rafts shall be used and employed shall see fit to make and publish in that behalf, and they are hereby authorized and empowered to make and publish such bye-laws, rules, and regulations, and from time to time to add to or amend the same, as need may require; but it is hereby expressly provided and enacted that any bye-laws, rules, and regulations so to be made and published shall be made equally applicable to and binding on all companies and persons so using such last-mentioned boats, barges, or other vessels.

Canal companies may provide boats and power for hauling and tracking vessels of other persons.

III. And be it enacted, that it shall also be lawful for any such company, trustees, or undertakers to purchase and provide and use boats and other vessels, and also horses, steam or other power, and machinery, for hauling, tracking, and towing, upon their own canals, rivers, or navigations, or upon any other canals, rivers, or navigations communicating therewith, either directly or by means of any intermediate canal, river, or navigation, and to employ a sufficient number of competent persons for those purposes, and to demand and receive for the use of such boats, and for such hauling, tracking, or towing, such reasonable hire or remuneration as shall be fixed by the respective committees, directors, or managers of such canals or navigations, or as shall be agreed upon between them and any person desiring the use of any

such boats or vessels, or requiring such hauling, tracking, or towing.

IV. Provided always, and be it enacted, that all charges to be made by any such company for the carriage of any such goods, wares, merchandise, articles, or things, or for the use of their boats and other vessels, or for the supply of haulage, trackage, or other power, shall be at all times charged equally to all persons, and after the same rate, whether per mile, or per ton per mile, or otherwise, in respect of all goods, wares, merchandise, articles, and things of a like description, and conveyed or propelled in a like boat or vessel at the same rate of speed, and passing along the same portion of any such canal or navigation under the like circumstances, and no reduction or advance in any of such charges shall be made, either directly or indirectly, in favour of or against any particular company or person passing along or using, or sending goods, wares, merchandise, articles, or things along the same portion of any such canal or navigation under the like circumstances.

Tolls, &c. to be charged equally to all persons.

V. And be it enacted, that any canal or navigation company exercising the powers by this Act granted shall have all the same powers and remedies for recovering any sum or sums of money which shall or may become due and owing to such company as carriers, or for the use of any boats or vessels, or for the supply of any haulage, trackage, or other power, by virtue of this Act, as are given to them respectively by their said several Acts of Parliament in reference to the tolls and duties thereby made payable, or they may, at their option, sue for and recover such charges, or any part thereof, in any of the superior courts; and such company may in like manner be sued for any loss sustained by any person or persons employing the said company as carriers, or for any neglect or misconduct of such company or their servants in respect of their conduct as carriers by virtue of this Act; and such company may prosecute any indictment or other proceeding at law in respect of any offence arising or being committed in the course of such carrying or other proceeding under this Act; and it shall be sufficient if any goods or other things which are set out in any indictment shall be described and laid to be the property of the said company.

Company may sue and be sued as carriers, and may prefer indictments.

VI. Provided always, and be it enacted, that nothing herein contained shall in any case extend to charge or make liable

Provisions in force relating

to common
carriers to
apply to such
companies.

any such company further or in any other case than where, according to the laws of this realm for the time being, common carriers would be liable; nor shall anything herein contained extend to deprive such company of any protection or privilege which either now or at any time hereafter common carriers have or may be entitled to, but such company shall from time to time and at all times have and be entitled to the benefit of every such protection and privilege.

Companies
empowered to
contract with
other canal
companies.

VII. And whereas, in order to facilitate the conveyance of goods and merchandise and other matters and things in manner aforesaid, it is expedient that canal and navigation companies should be empowered to enter into arrangements with each other in the way that railway companies are authorized, so as to avoid the necessity for a change of boats and other delays arising from a diversity of interest. Be it enacted that, notwithstanding anything in this Act or in any of the said Acts for establishing or incorporating the said companies contained, it shall be lawful for any such canal or navigation company as aforesaid and they are hereby empowered from time to time to make and enter into any contract or agreement with any other canal or navigation company, or the commissioners or undertakers thereof respectively (and which contract or agreement such other company is hereby authorized to enter into), either for the division or apportionment of tolls, dues, and charges, or for the passage over or along their respective canals or navigations, or any branches thereof, or any railways or tramways connected therewith and belonging thereto as aforesaid, of any boats, barges, or other vessels, or of any carriages or trucks drawn or propelled by steam, animal, or other power, of or belonging to any other company or which shall pass along any other line of canal, navigation, or railway, or for the passage over or along any other line of canal, navigation, or railway of any such boats, barges, or other vessels, carriages, or trucks drawn or propelled as aforesaid, which shall belong to any such company, or which shall pass along their line of canal, navigation, or railway, upon the payment of such tolls and duties, and under such conditions and restrictions, as may be deemed advisable and may be mutually agreed upon, and also to enter into any other contract with any other canal or navigation company that may be deemed advisable; and any such contract may contain such covenants, clauses, conditions, and agreements as the contracting parties may think advisable and mutually agree upon.

VIII. And be it enacted, that it shall be lawful for any such canal or navigation company, from time to time, by lease, to take effect in possession within six months from the letting thereof, to let the tolls and duties of any part thereof, upon the whole or any part of any such canal or navigation or of any such railways or tramways, to any other canal or navigation company, (and which lease such other canal or navigation company is hereby authorized to accept and enter into,) for any period not exceeding twenty-one years from the commencement of any such lease. Provided always, that no such letting shall take place unless public notice of the intention to let such tolls, or the part thereof intended to be let, shall have been given by the company proposing to let the same, by advertisement, at least fourteen days prior to the meeting of the directors or managers at which it shall be intended to let such tolls.

Canal companies empowered to lease their tolls.

IX. And be it enacted, that during the continuance of any such lease the respective lessees named therein, and also all persons appointed by them to collect the tolls so let, shall be deemed collectors of the tolls so let, and they shall have the same powers to collect and recover such tolls, and be subject to the same rules, duties, and penalties in reference thereto, as if they had been appointed for that purpose by the company demising the same.

Lessees to be deemed collectors.

X. And be it enacted, that if any such lease shall become void or voidable, according to any stipulations therein contained for that purpose, by reason of the failure on the part of the lessee to comply with any of the terms of such lease, or if all or any part of the rent thereby reserved shall be in arrear or unpaid for twenty-one days after the same shall become payable, then, upon application made by the company who shall have demised the same, to a justice, it shall be lawful for such justice to order any constable, with proper assistance, to enter upon any toll house, dwelling house, office, weighing machine, or other building, with the appurtenances, belonging to the lessors, and remove from the same the lessee or collector or other person found therein, together with his goods, and take possession thereof and of all property found therein belonging to the lessors, and deliver the same to them or any person appointed by them for that purpose.

Lessee making default to be removed.

XI. And be it enacted, that upon such possession being obtained it shall be lawful for the company having made such

Power to re-let tolls.

demise to determine the lease (if any) previously subsisting, and the same shall accordingly be utterly void, except as to the remedies of the lessors for payment of the rent due, or in respect of any unperformed or broken obligations or conditions on the lessee's part, all which remedies shall remain in full force; and in every such case, either during such proceedings or on the termination thereof, the company may again let the tolls to the same or any other person, or cause them to be collected in the same manner as if no such former lease had been made relative thereto.

Act not to
apply to canals
vested in
shareholders,
until approved
of at a meeting,
or in other
cases by pro-
priators, and
notices in-
serted in
Gazettes, &c.

XII. Provided always, and be it enacted, that this Act shall not apply to any canal or navigation the property wherein is vested in shareholders, nor shall the powers of leasing hereinbefore contained be exercised by any such canal or navigation company, until a meeting of the shareholders thereof shall have been duly convened in such manner as meetings are by their respective acts of incorporation or settlement required to be called or are usually called, and it shall have been determined by a majority of two thirds of the votes of the shareholders in such meeting assembled, either in person or by proxy, where by such acts of incorporation or settlement voting by proxy is allowed, to adopt the powers and provisions hereby granted, or such and so many of them as it shall at such meeting be determined shall be adopted, or to grant or accept any such lease, nor to any canal or navigation the property wherein is vested in one or more owner or owners, proprietor or proprietors, unless the owner or owners, proprietor or proprietors thereof shall determine to adopt the powers and provisions hereby granted, nor in either case until public notice of any such determination and intention shall have been inserted in the "London Gazette" in respect of canals or navigations in England or Wales, in the "Edinburgh Gazette" in respect of canals or navigations in Scotland, and in the "Dublin Gazette" in respect of canals or navigations in Ireland, and in some newspaper circulating in the county or counties wherein such canal or navigation, or some part thereof, shall pass, one month at the least previously to the exercise of any such powers, whereupon, or immediately after the expiration of such notice, every such company, or their respective committees, directors, or managers, or their agents by them duly authorized in manner aforesaid, may from time to time put in force and exercise the said powers or any of them, in the manner by this Act authorized.

TRANSMISSION OF LETTERS ACT, 1846. 179

XIII. And be it enacted, that nothing herein contained shall be construed to exempt any canal or navigation company who shall adopt the powers of this Act from the operation of any general Act regulating the manner of charging tolls and other charges upon canals or navigations in respect of passengers, goods, animals, articles, and things of a like description, which may be passed in the course of any future Session of Parliament.

Act not to exempt canal companies from any general Act.

XIV. And be it enacted, that this Act may be amended or repealed by any Act to be passed in this present Session of Parliament.

Alteration of Act.

VIII.—10 & 11 VICT. CAP. LXXXV.

An Act for giving further Facilities for the Transmission of Letters by Post and for the Regulation of the Duties of Postage thereon, and for other Purposes relating to the Post Office. [22nd July, 1847.]

XVI. And whereas by an Act passed in the second year of the reign of Her present Majesty, intituled "An Act to provide for the Conveyance of Mails by Railways," provision is made for the transmission of mails by railways: be it enacted, that it shall be lawful for the Postmaster-General to require in the manner prescribed by the said last-mentioned Act that any mails and post letter bags shall be conveyed and forwarded by any railway company on their railway under and pursuant to the said Act, notwithstanding any guard or officer of the Post Office shall not be sent with the same, or in charge thereof, and such mails and post letter bags shall be conveyed and forwarded by such railway company accordingly.

Power to send mails by railway in manner prescribed by 1 & 2 Vict. c. 98, without a guard.

IX.—10 & 11 VICT. CAP. XCIV.

An Act to amend an Act to enable Canal Companies to become Carriers upon their Canals. [22nd July, 1847.]

Whereas an Act was passed in the ninth year of the reign

8 & 9 Vict. c. 42.

of her present Majesty, intituled "An Act to enable Canal Companies to become Carriers of Goods upon their Canals," whereby, upon the recital that by divers Acts of Parliament railway companies had been empowered to convey upon their railways all such goods, wares, merchandise, articles, matters, and things as might be offered to them for that purpose, and that greater competition for the public advantage would be obtained if similar powers were granted to canal and navigation companies, it was enacted, that it should be lawful to the proprietors, trustees, or undertakers of any canal, river, or navigation, or their respective committees, directors, or managers, or their superintendents or other agents, to carry as common carriers for their own profit upon their respective canals, rivers, or navigations, and upon any railways or tramways belonging thereto, and upon other canals, rivers, and navigations communicating directly or indirectly therewith, all such goods, wares, merchandise, articles, matters, and things as might be intrusted to them for that purpose, and to purchase, hire, and construct, and to use and employ, any number of boats, barges, vessels, rafts, carts, waggons, carriages, and other conveniences, and to establish and furnish haulage, trackage, or other means of drawing or propelling the same by steam, animal, or other power, or for the purpose of collecting, carrying, conveying, warehousing, and delivering such goods, wares, merchandise, articles, matters, and things: and whereas the proprietors, trustees, and undertakers of many canals, rivers, and navigations are unable to avail themselves of the provisions of the said recited Act by reason of their having no statutory power of raising money to be applied to the purposes of the same, and it is expedient that the said recited Act should in that respect be amended, and that powers should be granted to such proprietors, trustees, and undertakers to raise money for the said purposes, but that object cannot be effected without the aid of Parliament: be it therefore enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present Parliament assembled, and by the authority of the same, that the said recited Act shall be incorporated with this Act.

Recited Act
incorporated
with this Act.
Canal com-
panies em-
powered to
borrow money

II. And be it enacted, that it shall be lawful to the proprietors, trustees, and undertakers of any canal, river, or navigation who shall have in the manner provided by the

said recited Act adopted the powers and provisions of the same to borrow on mortgage or bond in the manner or as nearly as may be in the manner prescribed by the Companies Clauses Consolidation Act, 1845, or the Companies Clauses Consolidation (Scotland) Act, 1845, as the case may be, any sum or sums of money not exceeding in all at any one time one-tenth part of the paid-up capital stock of such proprietors, trustees, or undertakers respectively, and to apply the moneys so raised to the purposes of the said recited Act, or any of such purposes: provided always that the monies so borrowed shall not be applied to any other purposes whatsoever: provided also, that the monies so to be borrowed, together with any monies otherwise borrowed by any such proprietors, trustees, or undertakers as aforesaid, shall not in all exceed one-third part of the paid-up capital of such proprietors, trustees, or undertakers respectively; and that no mortgage or bond to be granted for any monies borrowed in virtue of this Act shall prejudice or affect any security previously granted for any monies borrowed by virtue of any other Act or Acts of Parliament relating to any such canal, river, or navigation.

as prescribed by 8 & 9 Vict. cc. 16 and 17, and apply the same to purposes of recited Act.

Saving rights of existing creditors.

III. And for the purposes of this Act, be it enacted, that such of the clauses and provisions of the Companies Clauses Consolidation Act, 1845, and of the Companies Clauses Consolidation (Scotland) Act, 1845, respectively, as the case may be, as relate to the borrowing of money by companies on mortgage or bond, and to the conversion of borrowed money into capital, shall be incorporated with this Act.

8 & 9 Vict. cc. 16 and 17 incorporated with this Act.

IV. And be it enacted, that nothing herein contained shall be construed to exempt any canal or navigation company who have adopted or shall adopt the powers of the said recited Act from the operation of any general Act regulating the manner of charging tolls and other charges upon canals or navigations in respect of passengers, goods, animals, articles, and things of a like description that may be passed in the course of this or any future session of Parliament.

Companies not exempt from provisions of any future general Act.

V. And be it enacted, that this Act may be amended or repealed by any Act to be passed in this Session of Parliament.

Act may be amended, &c.

X.—17 & 18 VICT. CAP. XXXI.

An Act for the better Regulation of the Traffic on Railways and Canals. [10th July, 1854.]

Whereas it is expedient to make better provision for regulating the traffic on railways and canals: be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present Parliament assembled, and by the authority of the same, as follows:

- "Board of Trade." I. In the construction of this Act "the Board of Trade" shall mean the Lords of the Committee of Her Majesty's Privy Council for Trade and Foreign Plantations:
- "Traffic." The word "traffic" shall include not only passengers, and their luggage, and goods, animals, and other things conveyed by any railway company or canal company, or railway and canal company, but also carriages, waggons, trucks, boats, and vehicles of every description adapted for running or passing on the railway or canal of any such company:
- "Railway." The word "railway" shall include every station of or belonging to such railway used for the purposes of public traffic: and
- "Canal." The word "canal" shall include any navigation whereon tolls are levied by authority of Parliament, and also the wharves and landing places of and belonging to such canal or navigation, and used for the purposes of public traffic:
- "Company." The expression "railway company," "canal company," or "railway and canal company," shall include any person being the owner or lessee of or any contractor working any railway or canal or navigation constructed or carried on under the powers of any Act of Parliament:
- Stations. A station, terminus, or wharf shall be deemed to be near another station, terminus, or wharf when the distance between such stations, termini, or wharves shall not exceed one mile, such stations not being situate within five miles from St. Paul's church, in London.
- Duty of railway companies to make arrangements for receiving and II. Every railway company, canal company, and railway and canal company, shall, according to their respective powers, afford all reasonable facilities for the receiving and forwarding and delivering of traffic upon and from the several railways

and canals belonging to or worked by such companies respectively, and for the return of carriages, trucks, boats, and other vehicles, and no such company shall make or give any undue or unreasonable preference or advantage to or in favour of any particular person or company, or any particular description of traffic, in any respect whatsoever, nor shall any such company subject any particular person or company, or any particular description of traffic, to any undue or unreasonable prejudice or disadvantage in any respect whatsoever; and every railway company and canal company and railway and canal company having or working railways or canals which form part of a continuous line of railway or canal or railway and canal communication, or which have the terminus, station, or wharf of the one near the terminus, station, or wharf of the other, shall afford all due and reasonable facilities for receiving and forwarding all the traffic arriving by one of such railways or canals by the other, without any unreasonable delay, and without any such preference or advantage, or prejudice or disadvantage, as aforesaid, and so that no obstruction may be offered to the public desirous of using such railways or canals or railways and canals as a continuous line of communication, and so that all reasonable accommodation may, by means of the railways and canals of the several companies, be at all times afforded to the public in that behalf.

III. It shall be lawful for any company or person complaining against any such companies or company of anything done, or of any omission made in violation or contravention of this Act, to apply in a summary way, by motion or summons in England to Her Majesty's Court of Common Pleas at Westminster, or in Ireland to any of Her Majesty's Superior Courts in Dublin, or in Scotland to the Court of Session in Scotland, as the case may be, or to any judge of any such court; and upon the certificate to Her Majesty's Attorney-General in England or Ireland, or Her Majesty's Lord Advocate in Scotland, of the Board of Trade alleging any such violation or contravention of this Act by any such companies or company, it shall also be lawful for the said Attorney-General or Lord Advocate to apply in like manner to any such court or judge, and in either of such cases it shall be lawful for such court or judge to hear and determine the matter of such complaint; and for that purpose, if such court or judge shall think fit, to direct and prosecute, in such mode

forwarding traffic, without unreasonable delay, and without partiality.

Parties complaining that reasonable facilities for forwarding traffic, &c. are withheld, may apply by motion or summons to the superior courts.

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and by such engineers, barristers, or other persons as they shall think proper, all such inquiries as may be deemed necessary to enable such court or judge to form a just judgment on the matter of such complaint, and if it be made to appear to such court or judge on such hearing, or on the report of any such person, that anything has been done or omission made, in violation or contravention of this Act, by such company or companies, it shall be lawful for such court or judge to issue a writ of injunction or interdict, restraining such company or companies from further continuing such violation or contravention of this Act, and enjoining obedience to the same; and in case of disobedience of any such writ of injunction or interdict it shall be lawful for such court or judge to order that a writ or writs of attachment, or any other process of such court incident or applicable to writs of injunction or interdict, shall issue against any one or more of the directors of any company, or against any owner, lessee, contractor, or other person failing to obey such writ of injunction or interdict; and such court or judge may also, if they or he shall think fit, make an order directing the payment by any one or more of such companies of such sum of money as such court or judge shall determine, not exceeding for each company the sum of two hundred pounds for every day, after a day to be named in the order, that such company or companies shall fail to obey such injunction or interdict; and such monies shall be payable as the court or judge may direct, either to the party complaining, or into court to abide the ultimate decision of the court, or to Her Majesty, and payment thereof may, without prejudice to any other mode of recovering the same, be enforced by attachment or order in the nature of a writ of execution, in like manner as if the same had been recovered by decree or judgment in any superior court at Westminster or Dublin, in England or Ireland, and in Scotland by such diligence as is competent on an extracted decree of the court of session; and in any such proceeding as aforesaid, such court or judge may order and determine that all or any costs thereof or thereon incurred shall and may be paid by or to the one party or the other, as such court or judge shall think fit; and it shall be lawful for any such engineer, barrister, or other person, if directed so to do by such court or judge, to receive evidence on oath relating to the matter of any such inquiry, and to administer such oath.

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IV. It shall be lawful for the said Court of Common Pleas at Westminster, or any three of the judges thereof, of whom the Chief Justice shall be one, and it shall be lawful for the said courts in Dublin, or any nine of the judges thereof, of whom the Lord Chancellor, the Master of the Rolls, the Lords Chief Justice of the Queen's Bench and Common Pleas, and the Lord Chief Baron of the Exchequer, shall be five, from time to time to make all such general rules and orders as to the forms of proceedings and process, and all other matters and things touching the practice and otherwise in carrying this Act into execution before such courts and judges, as they may think fit, in England or Ireland, and in Scotland it shall be lawful for the court of session to make such Acts of Sederunt for the like purpose as they shall think fit.

Judges may make such regulations as may be necessary for proceedings under this Act.

V. Upon the application of any party aggrieved by the order made upon any such motion or summons as aforesaid, it shall be lawful for the court or judge by whom such order was made, to direct, if they think fit so to do, such motion or application on summons to be reheard before such court or judge, and upon such rehearing to rescind or vary such order.

Court or judge may order a rehearing.

VI. No proceeding shall be taken for any violation or contravention of the above enactments, except in the manner herein provided; but nothing herein contained shall take away or diminish any rights, remedies, or privileges of any person or company against any railway or canal or railway and canal company under the existing law.

Mode of proceeding under this Act.

VII. Every such company as aforesaid shall be liable for the loss of or for any injury done to any horses, cattle, or other animals, or to any articles, goods, or things, in the receiving, forwarding, or delivering thereof, occasioned by the neglect or default of such company or its servants, notwithstanding any notice, condition, or declaration made and given by such company contrary thereto, or in anywise limiting such liability; every such notice, condition, or declaration being hereby declared to be null and void: provided always, that nothing herein contained shall be construed to prevent the said companies from making such conditions with respect to the receiving, forwarding, and delivering of any of the said animals, articles, goods, or things, as shall be adjudged by the court or judge before

Company to be liable for neglect or default in the carriage of goods, notwithstanding notice to the contrary.

Company not to be liable beyond a limited amount in certain cases, unless the value declared and extra payment made.

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whom any question relating thereto shall be tried to be just and reasonable: provided always, that no greater damages shall be recovered for the loss of or for any injury done to any of such animals, beyond the sums hereinafter mentioned; (that is to say), for any horse fifty pounds; for any neat cattle, per head, fifteen pounds; for any sheep or pigs, per head, two pounds; unless the person sending or delivering the same to such company shall, at the time of such delivery, have declared them to be respectively of higher value than as above mentioned; in which case it shall be lawful for such company to demand and receive by way of compensation for the increased risk and care thereby occasioned, a reasonable percentage upon the excess of the value so declared above the respective sums so limited as aforesaid, and which shall be paid in addition to the ordinary rate of charge; and such percentage or increased rate of charge shall be notified in the manner prescribed in the statute eleventh George IV. and first William IV. chapter sixty-eight, and shall be binding upon such company in the manner therein mentioned: provided also, that the proof of the value of such animals, articles, goods, and things, and the amount of the injury done thereto, shall in all cases lie upon the person claiming compensation for such loss or injury: Provided also, that no special contract between such company and any other parties respecting the receiving, forwarding, or delivering of any animals, articles, goods, or things as aforesaid shall be binding upon or affect any such party unless the same be signed by him or by the person delivering such animals, articles, goods, or things respectively for carriage: provided also, that nothing herein contained shall alter or affect the rights, privileges, or liabilities of any such company under the said Act of the eleventh George IV. and first William IV. chapter sixty-eight, with respect to articles of the descriptions mentioned in the said Act.

Proof of value to be on the person claiming compensation.
No special contract to be binding unless signed.

Saving of Carriers Act, 11 Geo. IV. & 1 Will. IV. c. 68.

Short title.

VIII. This Act may be cited for all purposes as "The Railway and Canal Traffic Act, 1854."

XI.—21 & 22 VICT. CAP. LXXV.

An Act to amend the Law relating to Cheap Trains, and to restrain the Exercise of certain Powers by Canal Companies being also Railway Companies. [2nd August, 1858.]

Whereas by the Act passed in the Session of Parliament held in the seventh and eighth years of the reign of her present Majesty, chapter 85, section 6, it is enacted, amongst other things, with respect to the cheap trains thereby required to be provided in certain cases, that the fare or charge for each third-class passenger by any such train shall not exceed one penny for each mile travelled. And whereas it is expedient to amend the said Act in manner hereinafter mentioned. And whereas it is also expedient to amend the Act passed in the ninth year of the reign of her present Majesty, chapter 42, intituled "An Act to enable Canal Companies to become Carriers of Goods upon their Canals," by restraining as hereinafter mentioned the exercise of certain powers therein contained. Be it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and commons, in this present Parliament assembled, and by the authority of the same, as follows :—

7 & 8 Vict.
c. 85.

8 & 9 Vict.
c. 42.

I. When the distance travelled by any third-class passenger by any train run in compliance with the provisions relating to cheap trains contained in the said Act of the seventh and eighth of Victoria, chapter 85, is a portion of a mile, and does not amount to one mile, the fare for such portion of a mile may be one penny, or when such distance amounts to one mile, or two or more miles, and a portion of another mile, the fare or charge for such portion of a mile, if the same amounts to or exceeds one half mile, may be one halfpenny. Provided always, that for children of three years and upwards, but under twelve years of age, the fare or charge shall not exceed half the charge for an adult passenger.

For fractions under one mile one penny may be charged, and for fractions exceeding half a mile, where the distance amounts to one mile or more, one halfpenny may be charged.

II. After the passing of this Act, no fare heretofore charged to or received from any third-class passenger by any such train as aforesaid shall in any proceeding to be hereafter instituted be deemed to have exceeded the rate prescribed in such case by the said Act of the seventh and eighth of Victoria,

Rates heretofore charged not exceeding those allowed by this clause not to be deemed excessive.

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chapter eighty-five, if the same shall not have exceeded the rate of one farthing for each entire quarter of a mile travelled.

Canal companies, being also railway companies, not to take leases of canals unless specially authorized.

III. Notwithstanding anything contained in the said recited Act of the ninth year of Her Majesty, it shall not be lawful for any canal or navigation company, being also a railway company, or entitled to work any railway constructed under the authority of any Act of Parliament, hereafter to accept a lease of the whole or any part of the undertaking of any other railway and canal company or of any canal or navigation company, or of the tolls, dues, or charges upon or in respect of the whole or any part of any such undertaking, except under the powers of some Act or Acts heretofore passed or to be hereafter passed in which the parties to any such lease shall be specifically named and authorized to enter into the same.

Act to be in force for one year.

IV. This Act shall continue in force for one year next after the passing thereof, and thence to the end of the then next Session of Parliament.¹

XII.—22 & 23 VICT. CAP. LIX.

An Act to enable Railway Companies to settle their Differences with other Companies by Arbitration.

[13th August, 1859.]

For the better providing for the settlement by arbitration of matters in which railway companies in the United Kingdom are mutually interested, be it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and commons, in this present Parliament assembled, and by the authority of the same, as follows (that is to say):—

Short title.

“Railway companies.”

I. This Act may for all purposes be cited as “Railway Companies Arbitration Act, 1859;” and the expression “railway companies” in this Act extends to and includes all persons being the owners or lessees of, and all contractors working any railway upon which steam power is used.

¹ This Act is made perpetual by 23 & 24 Vict. c. xli.

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II. Any two or more railway companies, whether already or hereafter incorporated (in this Act called "the companies"), from time to time, by writing under their respective common seals, may agree to refer and may refer to arbitration, in accordance with this Act, any then existing or future differences, questions, or other matters whatsoever in which they then are or thereafter shall be mutually interested, and which they might lawfully settle or dispose of by agreement between themselves, and may delegate to the person or persons to whom the reference is made any power to determine all or any of the terms of any contract to be made between the companies which the directors of the companies respectively might lawfully delegate to any committees of themselves respectively.

Power for railway companies to refer matters to arbitration.

III. The companies jointly, but not otherwise, from time to time, by writing under their respective common seals, may add to, alter, or revoke any agreement for reference in accordance with this Act theretofore entered into between the companies, or any of the terms, conditions, or stipulations thereof.

Power to alter or revoke agreements for reference.

IV. Every reference or agreement in accordance with this Act, except so far as it is from time to time revoked or modified in accordance with this Act, shall bind the companies, and may and shall be carried into full effect.

Agreements to be carried into effect.

V. Where the companies agree, the reference shall be made to a single arbitrator.

Reference to a single arbitrator.

VI. Except where the companies agree that the reference shall be made to a single arbitrator, the reference shall be made as follows, to wit:—

Reference to two or more arbitrators.

Where there are two companies the reference shall be made to two arbitrators.

Where there are three or more companies the reference shall be made to so many arbitrators as there are companies.

VII. Where there are to be two or more arbitrators, every company shall by writing under their common seal appoint one of the arbitrators, and shall give notice in writing thereof to the other company or companies.

Appointment of arbitrators by companies.

VIII. Where there are to be two or more arbitrators, if any of the companies fail to appoint an arbitrator within fourteen days after being thereunto requested in writing by the other company, or by the other companies or any of them, then, on

Appointment of arbitrators by Board of Trade.

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the application of the companies or any of them, the Board of Trade, instead of the company so failing to appoint an arbitrator, may appoint an arbitrator; and the arbitrator so appointed shall for the purposes of this Act be deemed to be appointed by the company so failing.

Appointment
of arbitrators
by companies
to supply
vacancies.

IX. When the reference is made to two or more arbitrators, if before the matters referred to them are determined any arbitrator dies, or becomes incapable or unfit, or for seven consecutive days fails to act as arbitrator, the company by which he was appointed shall by writing under their common seal appoint an arbitrator in his place.

Appointment
of arbitrators
by Board of
Trade to
supply
vacancies.

X. Where the company by which an arbitrator ought to be appointed in the place of the arbitrator so deceased, incapable, unfit, or failing to act, fail to make the appointment within fourteen days after being thereunto requested in writing by the other company, or by the other companies or any of them, then on the application of the companies or any of them the Board of Trade may appoint an arbitrator; and the arbitrator so appointed by the Board of Trade shall for the purposes of this Act be deemed to be appointed by the company so failing.

Appointment
of arbitrator
not revocable.

XI. When any appointment of an arbitrator is made, the company making the appointment shall have no power to revoke the appointment, without the previous consent in writing of the other company or every other company in writing under their common seal.

Appointment
of umpire by
arbitrators.

XII. Where two or more arbitrators are appointed, they shall, before entering on the business of the reference, appoint by writing under their hands an impartial and qualified person to be their umpire.

Appointment
of umpire by
Board of
Trade.

XIII. If the arbitrators do not appoint an umpire within seven days after the reference is made to the arbitrators, then, on the application of the companies, or any of them, the Board of Trade may appoint an umpire; and the umpire so appointed shall for the purposes of this Act be deemed to be appointed by the arbitrators.

Appointment
of umpire by
arbitrators
to supply
vacancy.

XIV. Where two or more arbitrators are appointed, if before the matters referred to them are determined their umpire dies, or becomes incapable or unfit, or for seven consecutive days fails to act as umpire, the arbitrators shall by writing under their hands appoint an impartial and qualified person to be their umpire in his place.

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XV. If the arbitrators fail to appoint an umpire within seven days after notice in writing to them of the decease, incapacity, unfitness, or failure to act of their umpire, then, on the application of the companies, or any of them, the Board of Trade may appoint an umpire; and the umpire so appointed shall for the purposes of this Act be deemed to be appointed by the arbitrators so failing.

Appointment of umpire by Board of Trade to supply vacancy.

XVI. Every arbitrator appointed in the place of a preceding arbitrator, and every umpire appointed in the place of a preceding umpire, shall respectively have the like powers and authorities as his respective predecessor.

Succeeding arbitrators and umpires to have powers of predecessors.
Reference to umpire.

XVII. Where there are two or more arbitrators, if they do not, within such a time as the companies agree on, or failing such agreement, within thirty days next after the reference is made to the arbitrators, agree on their award thereon, then the matters referred to them, or such of those matters as are not then determined, shall stand referred to their umpire.

XVIII. The arbitrator, and the arbitrators, and the umpire respectively may call for the production of any documents of evidence in the possession or power of the companies respectively, or which they respectively can produce, and which the arbitrator, or the arbitrators, or the umpire shall think necessary for determining the matters referred, and may examine the witnesses of the companies respectively on oath, and may administer the requisite oath; and in Scotland may grant diligence for the recovery of the documents or evidence, and for citing witnesses, and on application to the Lord Ordinary he may issue letters of supplement or other necessary writs in support of the diligence.

Power for arbitrators, &c. to call for books, &c., and administer oath.

XIX. Except where and as the companies otherwise agree, the arbitrator, and the arbitrators, and the umpire respectively may proceed in the business of the reference in such manner as he and they respectively shall think fit.

Procedure in the arbitration.

XX. The arbitrator, and the arbitrators, and the umpire respectively may proceed in the absence of all or any of the companies in every case in which, after giving notice in that behalf to the companies respectively, the arbitrator, or the arbitrators, or the umpire shall think fit so to proceed.

Arbitration may proceed in absence of companies.

XXI. The arbitrator, and the arbitrators, and the umpire respectively may, if he and they respectively think fit, make several awards, each on part of the matters referred, instead of one award on all the matters referred; and every such

Several awards may be made.

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award on part of the matters shall for such time as shall be stated in the award, the same being such as shall have been specified in the agreement for arbitration, or in the event of no time having been so specified, for any time which the arbitrator may be legally entitled to fix, be binding as to all the matters to which it extends, and as if the matters awarded on were all the matters referred, and that notwithstanding the other matters or any of them be not then or thereafter awarded on.

Awards made
in due time to
bind all parties.

XXII. The award of the arbitrator, or of the arbitrators, or of the umpire, if made in writing under his or their respective hand or hands, and ready to be delivered to the companies within such a time as the companies agree on, or, failing such agreement, within thirty days next after the matters in difference are referred to (as the case may be) the arbitrator, or the arbitrators, or the umpire, shall be binding and conclusive on all the companies.

Power for
umpire to
extend period
for making his
award.

XXIII. Provided always, that (except where and as the companies otherwise agree) the umpire, from time to time by writing under his hand, may extend the period within which his award is to be made; and if it be made and ready to be delivered within the extended time, it shall be as valid and effectual as if made within the prescribed period.

Awards not to
be set aside
for informality.

XXIV. No award made on any arbitration in accordance with this Act shall be set aside for any irregularity or informality.

Awards to be
obeyed.

XXV. Except only so far as the companies bound by any award in accordance with this Act from time to time otherwise agree, all things by every award in accordance with this Act lawfully required to be done, omitted, or suffered shall be done, omitted, or suffered accordingly.

Agreements,
arbitrations,
and awards to
have effect.

XXVI. Full effect shall be given by all the superior courts of law and equity in the United Kingdom, according to their respective jurisdiction, and by the companies respectively, and otherwise, to all agreements, references, arbitrations, and awards in accordance with this Act; and the performance or observance thereof may, where the courts think fit, be compelled by distress infinite on the property of the companies respectively, or by any other process against the companies respectively or their respective property that the courts or any judge thereof shall direct, and where requisite frame for the purpose.

Costs of

XXVII. Except where and as the companies otherwise

agree, the costs of and attending the arbitration and the award shall be in the discretion of the arbitrator, and the arbitrators, and the umpire respectively. arbitration and award.

XXVIII. Except where and as the companies otherwise agree, and if and so far as the award does not otherwise determine, the costs of and attending the arbitration and the award shall be borne and paid by the companies in equal shares, and in other respects the companies shall bear their own respective costs. Payment of costs.

XXIX. The submission to any arbitration in accordance with this Act may at any time be made a rule of any of Her Majesty's Superior Courts of Record at Westminster, or, as the case may be, at Dublin, on the application of any party interested; and the Court may remit the matter to the arbitrator, or to the arbitrators, or to the umpire, with any directions the Court think fit. Submission to arbitration to be made a rule of court.

XIII.—26 & 27 VICT. CAP. XCII.

An Act for consolidating in One Act certain Provisions frequently inserted in Acts relating to Railways.

[28th July, 1863.]

Whereas The Railways Clauses Consolidation Act, 1845, and The Railways Clauses Consolidation (Scotland) Act, 1845, respectively, were passed in order to comprise in one general Act such provisions relating to railways in England or Ireland, or in Scotland, respectively, as were at the times of the passing of those Acts usually introduced into Acts of Parliament authorizing the construction of railways :

And whereas sundry provisions of the like nature, but not comprised in the said general Acts respectively, are now frequently introduced into Acts of Parliament relating to railways, and it is expedient to comprise such last-mentioned provisions also in one general Act, such Act to be applicable to England or Ireland, or to Scotland, as the case may require, and that as well for the purpose of avoiding the necessity of repeating such provisions in special Acts relating to railways, as for ensuring greater uniformity in the provisions themselves :

Be it therefore enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and commons, in this present Parliament assembled, and by the authority of the same, as follows:

Short title.

I. This Act may be cited as The Railways Clauses Act, 1863.

Division of
Act into parts.

II. This Act shall be deemed to be divided into five parts, as follows:

Part I. relating to construction of a railway;

Part II. relating to extension of time;

Part III. relating to working agreements;

Part IV. relating to steam vessels;

Part V. relating to amalgamation.

* * * * *

PART III.

WORKING AGREEMENTS.

Restrictions
on agreements
between com-
panies.

XXII. Where two or more companies are authorized by a special Act hereafter passed and incorporating this part of this Act, to agree among themselves with respect to all or any of the following purposes, namely:

The maintenance and management of the railways of the companies respectively, or any one or more of them, or any part thereof respectively, and of the works connected therewith respectively, or any of them;

The use and working of the railways or railway, or of any part thereof, and the conveyance of traffic thereon;

The fixing, collecting, and apportionment of the tolls, rates, charges, receipts, and revenues levied, taken, or arising in respect of traffic;—

Then and in every such case the authority so to agree, or the agreement when entered into, shall not in any manner affect any of the tolls, rates, or charges which the companies parties thereto are from time to time respectively authorized to demand and receive from any person or from any other company; but all such persons and companies shall, notwithstanding the agreement, be entitled to the use and benefit of the railways of the several companies, parties to the agreement, on the same terms and conditions, and on payment of the same tolls, rates, and charges, as they would be if such

authority had not been given or the agreement had not been entered into.

XXIII. The agreement shall not, save so far as its terms and conditions are authorized by the Railways Clauses Consolidation Act, 1845, or by the Railways Clauses Consolidation (Scotland) Act, 1845, as the case may require, or by any other general statute or law from time to time in force with respect to the companies parties to the agreement, have any operation unless and until it is sanctioned by such proportion of the votes of the shareholders and stockholders entitled to vote in that behalf at meetings of the several companies parties thereto, present (personally or by proxy) at a general meeting of each company specially convened for the purpose (in manner hereinafter mentioned), as is prescribed in the special Act, and if no proportion is prescribed, then by three-fifths of such votes.

Sanction of
shareholders to
agreements.

Every such meeting shall be convened by circular addressed to each such shareholder and stockholder, and served in the manner prescribed by The Companies Clauses Consolidation Act, 1845, or The Companies Clauses Consolidation (Scotland) Act, 1845, as the case may require, with respect to notices requiring to be served by the company upon the shareholders, and also by advertisement inserted once at least in each of two consecutive weeks in some newspaper published or circulating in the county prescribed in the special Act, and if no county is prescribed, then in the county in which the head office of the company is situate, the last of such advertisements to be published not less than seven days before the meeting.

XXIV. Before the companies enter into the agreement, notice of their intention to do so shall be given by them or one of them, in a form to be approved by the Board of Trade, inserted once at least in each of three successive weeks in some newspaper published or circulating in the county prescribed in the special Act, and if no county is prescribed, then in the county or one of the counties in which each railway, to the maintenance, management, use, or working whereof the proposed agreement relates, or some portion of that railway, is situate; and the notice shall set forth within what time and in what manner any company or person aggrieved by the proposed agreement, and desiring to object thereto, may bring the objection before the Board of Trade.

Public notice
of intention to
enter into such
agreement.

Approval of
Board of
Trade.

XXV. The agreement shall not have any operation until it is approved by the Board of Trade; and the Board of Trade shall not approve the agreement without being satisfied of its having received such sanction of meetings of the respective companies as aforesaid.

Joint com-
mittee for
purposes of
agreements.

XXVI. The companies parties to the agreement may, in accordance therewith and for the purposes thereof, appoint a joint committee, composed of such number of the directors of each company as the companies think proper, and from time to time may vary and renew the joint committee as occasion requires, and may regulate the proceedings of the joint committee, and may delegate to the joint committee all such of the powers of the companies as the companies think necessary for carrying into effect the purposes of the agreement; and the joint committee shall have and may exercise the powers so from time to time delegated to them in like manner as the same powers might be had and exercised by the companies respectively or their respective directors.

Agreements
between com-
panies may be
modified by
Board of
Trade.

XXVII. At the expiration of the first or any subsequent period of ten years after the making of the agreement, the Board of Trade may, if they are of opinion that the interests of the public are prejudicially affected thereby, cause the same to be revised; and the Board of Trade may require the companies parties thereto to publish such notices of any intended revision of the agreement as the Board of Trade may direct; and the Board of Trade may modify the agreement in such manner as may seem expedient for the protection of the interests of the public, and may declare the modification to be part of the agreement, and the same shall be read and take effect accordingly.

Working
agreements
between a
company and
an individual.

XXVIII. Where a company is authorized by a special Act hereafter passed, and incorporating this part of this Act, to agree with a person being the proprietor of a railway with respect to all or any of the purposes specified in this part of this Act, then and in every such case the provisions of this part of this Act shall apply, *mutatis mutandis*, to the company in relation to such authority and to the agreement entered into by virtue thereof.

Alteration of
agreement.

XXIX. For the purposes of this part of this Act, any alteration of an agreement by the parties thereto shall be deemed an agreement.

PART IV.

STEAM VESSELS.

XXX. Where a railway company incorporated either before or after the passing of this Act is authorized by a special Act hereafter passed and incorporating this part of this Act, to build, or buy, or hire, and to use, maintain, and work, or to enter into arrangements for using, maintaining, or working steam vessels for the purpose of carrying on a communication between any towns or ports, and to take tolls in respect of such steam vessels,—then and in every such case tolls shall be at all times charged to all persons equally, and after the same rate in respect of passengers conveyed in a like vessel passing between the same places under like circumstances; and no reduction or advance in the tolls shall be made in favour of or against any person using the steam vessels in consequence of his having travelled or being about to travel on the whole or any part of the company's railway, or not having travelled or not being about to travel on any part thereof; or in favour of or against any person using the railway in consequence of his having used or being about to use or his not having used or not being about to use the steam vessels; and where an aggregate sum is charged by the company for conveyance of a passenger by a steam vessel and on the railway, the ticket shall have the amount of toll charged for conveyance by the steam vessel distinguished from the amount charged for conveyance on the railway.

Provision for securing equality of treatment.

XXXI. The provisions of the Railway and Canal Traffic Act, 1854, so far as the same are applicable, shall extend to the steam vessels, and to the traffic carried on thereby.

Application of Railway and Canal Traffic Act.

XXXII. The company may from time to time make bye-laws in relation to passengers, animals, and goods conveyed in or upon the steam vessels, and as to the embarkation and disembarkation thereof respectively, and may enforce the observance of the same by penalties, in the same manner as they may with respect to passengers, animals, and goods conveyed upon their railway; such bye-laws to be sanctioned and authenticated in the same manner as is required by any special or other Act with respect to bye-laws relating to the company's railway, and be published by being painted on boards, or printed on paper and pasted on boards,

Company empowered to make bye-laws for regulating steam vessels.

and hung up or affixed and continued on some conspicuous part of every steam vessel and landing-place of the company; and such bye-laws, and all penalties in respect of the breach thereof, shall be enforced and recovered in the same manner as is provided with respect to bye-laws relating to the company's railway, and to penalties in respect of the breach thereof.

Recovery of
money by
distress.

XXXIII. All tolls and charges for the steam vessels due and payable to the company on any account whatsoever, and all costs, damages, and expenses by the special Act directed to be paid in respect of the steam vessels, may be levied by distress; and in England or Ireland any justice, and in Scotland the sheriff, may, on application by or on behalf of the company, issue his warrant accordingly.

The justice or sheriff who issues the warrant of distress may order that the costs of the proceedings for the recovery of the toll or sum shall be paid by the person liable to pay the toll or sum, and the costs shall be ascertained by the justice or sheriff, and shall be included in the warrant of distress for the recovery of the toll or sum.

Several names
in one warrant.

XXXIV. Any number of names and sums may be included in any warrant of distress or notice obtained or given by the company for any of the purposes of this part of this Act, or of the provisions of the special Act with respect to the steam vessels, and may be stated either in the body of the warrant or notice, or in a schedule thereto.

Provision for
cesser of
powers as to
steam vessels,
on report, from
Board of
Trade.

XXXV. In every seventh year after the passing of the special Act, reckoned from the first day of January next after its passing, the Board of Trade, if they are of opinion that the interests of the public are prejudicially affected by the exercise of the powers of the company relative to steam vessels, may give to the company notice in writing thereof, and of the reasons on which that opinion is founded; and if the company does not before the beginning of the then next session of Parliament make provision to the satisfaction of the Board of Trade for protection of the interests of the public; or if the injury done to the interests of the public is in the opinion of the Board of Trade incapable of being remedied by the company, then the Board of Trade, at the beginning of the Session of Parliament then next following, shall report to both Houses of Parliament such their opinion, and the reasons on which that opinion is founded, and at the

expiration of twelve calendar months after the presentation to the Houses of Parliament of that report, the powers of the company relative to steam vessels, or such of them as are specified in the report, shall, unless Parliament in the mean time otherwise provides, cease to be exercised.

XIV.—31 & 32 VICT. CAP. CXIX.

An Act to amend the Law relating to Railways.

[31st July, 1868.]

XV. On and after the first day of January, one thousand eight hundred and sixty nine, every company shall cause to be exhibited in a conspicuous place in the booking office of each station on their line a list or lists, painted, printed, or written, in legible characters, containing the fares of passengers by the trains included in the time tables of the company from that station to every place for which passenger tickets are there issued.

Fares to be posted in stations.

XVI. Where a company is authorized to build or buy or hire, and to use, maintain and work, or to enter into arrangements for using, maintaining, or working steam vessels for the purpose of carrying on a communication between any towns or ports, and to take tolls in respect of such steam vessels, then and in every such case tolls shall be at all times charged to all persons equally and after the same rate in respect of passengers conveyed in a like vessel passing between the same places under like circumstances; and no reduction or advance in the tolls shall be made in favour of or against any person using the steam vessels in consequence of his having travelled or being about to travel on the whole or any part of the company's railway, or not having travelled or not being about to travel on any part thereof or in favour of or against any person using the railway in consequence of his having used or being about to use, the steam vessels; and where an aggregate sum is charged by the company for conveyance of a passenger by a steam vessel and on the railway, the ticket shall have the amount of toll charged for conveyance by the steam vessel distinguished from the amount charged for conveyance on the railway.

Provision for securing equality of treatment where railway company works steam vessels.

The provisions of "The Railway and Canal Traffic Act, 1854," so far as the same are applicable, shall extend to the steam vessels and to the traffic carried on thereby.

Company bound to furnish particulars of charges for goods.

XVII. Where any charge shall have been made by a company in respect of the conveyance of goods over their railway, on application in writing within one week after payment of the said charge made to the secretary of the company by the person by whom or on whose account the same has been paid, the company shall within fourteen days render an account to the person so applying for the same, distinguishing how much of the said charge is for the conveyance of the goods on the railway, including therein tolls for the use of the railway, for the use of carriages, for locomotive power, and how much of such charge is for loading and unloading, covering, collection, delivery, and for other expenses, but without particularizing the several items of which the last mentioned portion of the charge may consist.

Charge when two railways worked by one company.

XVIII. Where two railways are worked by one company, then in the calculation of tolls and charges for any distance in respect of traffic (whether passengers, animals, goods, carriages or vehicles) conveyed on both railways, the distances traversed shall be reckoned continuously on such railways as if they were one railway.

* * * * *

VI. ARBITRATION BY BOARD OF TRADE.

Arbitrator appointed by the Board of Trade.

XXX. Whenever the Board of Trade are required to make any award or to decide any difference in any case in which a company is one of the parties, they may appoint an arbitrator to act for them, and his award or decision shall be deemed to be the award or decision of the Board of Trade. If the arbitrator dies, or in the judgment of the Board of Trade becomes incapable or unfit, the Board of Trade may appoint another arbitrator.

Remuneration of arbitrator.

XXXI. The Board of Trade may fix the remuneration of any arbitrator or umpire appointed by them in pursuance of this or any other Act in any case where a company is one of the parties, and may, if they think fit, frame a scale of remuneration for arbitrators or umpires so appointed by them, and no arbitrator or umpire so appointed by them shall be entitled to any larger remuneration than the amount fixed by the Board of Trade.

XXXII. The provisions of sections eighteen to twenty-nine, both inclusive, of "The Railway Companies Arbitration Act, 1859" shall, so far as is consistent with the tenor thereof, apply to an arbitrator appointed by the Board of Trade, and to his arbitration and award, notwithstanding that one of the parties between whom he is appointed to arbitrate may not be a railway company; and in construing those sections for the purpose of this Act the word "companies" shall be construed to mean the parties to the arbitration.

Cost, &c., of arbitrations.

XXXIII. All disputed questions as to any costs, charges, and expenses of and incident to any arbitration or award made under the provisions of "The Lands Clauses Consolidation Act, 1845," or of any special Act of Parliament incorporating the same, whether the question in dispute arise as to compensation to be made for lands required to be purchased and actually taken by any railway company, or in respect of the injurious affecting of other lands not taken, or otherwise in relation thereto, shall, if either party so requires, be taxed and settled as between the parties by one of the masters of the Court of Queen's Bench; and it shall be lawful for such master to receive and take in respect of each folio in length of every bill of costs so settled a fee of one shilling and no more, and such fee shall be taken in money and not in stamps and may be retained by the said master for his own use and benefit.

Costs, charges, &c., to be taxed and settled by masters of the Court of Queen's Bench.

* * * * *

XXXVI. Whenever in pursuance of any notice under the Act of the session of the first and second years of the reign of her present Majesty, chapter ninety-eight, "To provide for the Conveyance of Mails by Railways" or otherwise, the mails or post letter bags are conveyed and forwarded by a company on their railway by a special train, the Postmaster-General may by the same or any other notice in writing require that the whole of such special train shall be appropriated to the service of the post office exclusively of all other traffic except such as he may sanction, and the remuneration to be paid for such service shall be settled as prescribed by the sixth section of that Act.

Special trains exclusively for post-office.

XXXVII. All requisitions, notices, and documents which relate to a company, if purporting to be signed by the Postmaster-General or some secretary or assistant secretary to the post office, or by some officer appointed for the purpose by the

Service of requisition, &c., by Postmaster-General.

day of 187 , in which
office a copy of the proposed agreement can be seen.

Dated this day of 187 .

Secretary of the
(Solicitor or Agent.)

XVI.—DIRECTIONS OF THE RAILWAY COMMISSIONERS RELATING TO WORKING AGREEMENTS BETWEEN TWO OR MORE RAILWAY COMPANIES.

1. Care should be taken that at least twenty-eight days from the date of the newspaper containing the first insertion of the notice to the public of the intention of the companies to enter into a working agreement, are allowed for bringing objections before the Railway Commissioners.

2. At the expiration of the period specified in the notices for bringing objections before the Railway Commissioners, and together with the application for their approval, there should be sent to their office :

a. The Act or Acts of Parliament authorizing such agreement.

b. Copies of the newspapers containing the notices of the intention of the two companies to enter into such agreement which are required by the 24th section of the Railways Clauses Act, 1863.

c. Copies of the newspapers containing the advertisements of each company, required by the 23rd section of the same Act, convening the special meetings at which the agreement was assented to.

d. A copy of the circular which was addressed to each shareholder.

e. The agreement, sealed by the companies, together with a certificate given under the hands of the chairman at the meeting, and of the secretary of each company, stating that such agreement was duly assented to by the required proportion of the votes of the shareholders and stockholders, entitled to vote in that behalf at meetings of the company, present (personally or by proxy) at a general meeting of each

of the companies specially convened for that purpose, pursuant to the 23rd section of the same Act.

3. The application to the Commissioners for their approval should be made in the manner prescribed by their general orders of August 1873, Nos. 2, 6 and 13.

The agreement, when approved by the Commissioners, will be returned with their approval signified thereon, and the copy lodged at their office will be retained by them.

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